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FIRST DEAN OF THE SCHOOL

**By his Wife and Daughter**

**A. M. BOARDMAN and ELLEN D. WILLIAMS**



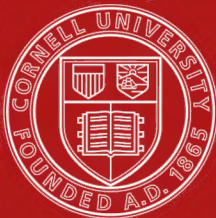
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# BURN'S JUSTICE OF THE PEACE

AND

## Parish Officer.

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THE THIRTIETH EDITION.

IN FIVE VOLUMES.

EDITED, EXCEPT THE VOLUME OF "POOR,"

By J. B. MAULE, ESQ., Q.C.,

RECORDER OF LEEDS.

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VOL. III.

CONTAINING TITLES "INDICTMENT" TO "PROMISSORY NOTES."

By L. W. CAVE, ESQ.,

BARRISTER AT LAW.

And yet it is said, Labour in thy vocation; which is as much to say as, Let the Magistrates be labouring men.—SECOND PART OF HENRY SIXTH.

Sapientis est Judicis cogitare tantum sibi esse permissum quantum sit commissum ac creditum.—CICERO.

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## PREFACE TO VOL. III.



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2, DR. JOHNSON'S BUILDINGS, TEMPLE.



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s. 12	895	s. 2	1085
s. 13	896	s. 3	1085
s. 14	896	s. 4	1085
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s. 18	897	s. 2	893
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s. 20	897	s. 4	895
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	s. 98 703		s. 46 835
	s. 99 703		s. 47 836
	s. 100 704		s. 48 836
	s. 101 704		s. 49 836
	s. 102 704		s. 50 836
	s. 103 705		s. 51 836
	s. 104 706		s. 52 837
	s. 105 706		s. 53 837
	s. 106 706		s. 54 837
	s. 107 707		s. 55 837
	s. 108 707		s. 56 837
	s. 109 707		s. 57 838
	s. 110 707		s. 58 838
	s. 111 708		s. 59 838
	s. 112 708	c. 15,	s. 1 389
	s. 113 708		s. 2 389
	s. 114 708		s. 3 389
	s. 115 710		s. 4 390
	s. 116 710		s. 5 390
	s. 117 710		s. 6 391
c. 118,	s. 111 197		s. 7 391
10 Vict. c. 14,	s. 1 826		s. 8 391
	s. 2 826		s. 9 391
	s. 3 826		s. 10 392
	s. 4 827		s. 11 392
	s. 5 828		s. 12 392
	s. 6 828		s. 13 392
	s. 7 828		s. 14 393
	s. 8 828		s. 15 393
	s. 9 829		s. 16 393
	s. 10 829		s. 17 393
	s. 11 829		s. 18 393
	s. 12 829		s. 19 394
	s. 13 829		s. 20 394
	s. 14 830		s. 21 394
	s. 15 830		s. 22 394
	s. 16 830		s. 23 394
	s. 17 830		s. 24 394
	s. 18 830		s. 25 394
	s. 19 831		s. 26 395
	s. 20 831		s. 27 395
	s. 21 831		s. 28 395
	s. 22 831		s. 29 395
	s. 23 831		s. 30 395
	s. 24 831		s. 31 395
	s. 25 832		s. 32 396
	s. 26 832		s. 33 396
	s. 27 832		s. 34 396
	s. 28 832		s. 35 396



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11 & 12 Vict. c. 43,	s. 19	143	11 & 12 Vict. c. 63,	s. 53	452
	s. 23	142		s. 54	453
	s. 24	142		s. 55	454
	s. 29	135		s. 56	454
	s. 30	175		s. 57	454
	s. 35	126		s. 58	454
c. 44,	s. 1	156, 158		s. 60	455
	s. 2	156, 158		s. 61	458
	s. 3	155		s. 62	458
	s. 4	155		s. 63	458
	s. 5	138, 150, 154		s. 64	458
	s. 6	155		s. 65	459
	s. 9	162		s. 66	459
	s. 10	169		s. 67	460
	s. 11	170		s. 68	461
	s. 12	172		s. 69	461
	s. 13	161, 171		s. 70	462
	s. 14	171		s. 71	463
	s. 28	168		s. 72	463
c. 63,	s. 1	416		s. 73	463
	s. 2	416		s. 74	468
	s. 8	420		s. 75	468
	s. 9	420		s. 76	469
	s. 10	421		s. 77	469
	s. 11	423		s. 78	470
	s. 12	424		s. 79	470
	s. 13	425		s. 80	470
	s. 14	426		s. 81	472
	s. 15	426		s. 82	472
	s. 16	426		s. 83	473
	s. 17	427		s. 85	477
	s. 18	427		s. 86	478
	s. 19	427		s. 87	478
	s. 20	437		s. 88	478
	s. 21	439		s. 89	478
	s. 22	439		s. 90	480
	s. 23	439		s. 91	480
	s. 24	439		s. 92	481
	s. 25	440		s. 93	481
	s. 26	440		s. 94	481
	s. 27	440		s. 95	482
	s. 28	441		s. 96	482
	s. 29	441		s. 97	482
	s. 30	441		s. 98	482
	s. 31	441		s. 99	482
	s. 32	441		s. 100	482
	s. 33	441		s. 101	482
	s. 34	442		s. 102	482
	s. 35	443		s. 103	483
	s. 36	443		s. 104	484
	s. 37	443		s. 105	484
	s. 38	444		s. 106	484
	s. 39	444		s. 107	488
	s. 40	445		s. 108	488
	s. 41	445		s. 109	488
	s. 42	445		s. 110	488
	s. 43	446		s. 111	488
	s. 44	446		s. 112	489
	s. 45	446		s. 113	489
	s. 46	447		s. 114	489
	s. 47	447		s. 115	492
	s. 48	447		s. 116	492
	s. 49	450		s. 117	493
	s. 50	451		s. 118	493
	s. 51	452		s. 119	498
	s. 52	452		s. 120	498

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11 & 12 Vict. c. 63,	s. 121	499	14 & 15 Vict. c. 34,	s. 4	549
	s. 122	500		s. 5	549
	s. 123	502		s. 6	549
	s. 124	503		s. 7	549
	s. 125	503		s. 8	549
	s. 126	504		s. 9	550
	s. 127	504		s. 10	550
	s. 128	504		s. 11	550
	s. 129	505		s. 12	550
	s. 130	505		s. 13	551
	s. 131	505		s. 14	551
	s. 132	506		s. 15	551
	s. 133	506		s. 16	551
	s. 134	507		s. 17	551
	s. 135	507		s. 18	551
	s. 136	507		s. 19	552
	s. 137	508		s. 20	552
	s. 138	508		s. 21	522
	s. 139	508		s. 22	552
	s. 140	509		s. 23	552
	s. 141	513		s. 24	552
	s. 142	513		s. 25	552
	s. 143	513		s. 26	553
	s. 144	514		s. 27	553
	s. 145	514		s. 28	553
	s. 146	514		s. 29	554
	s. 147	514		s. 30	554
	s. 148	515		s. 31	554
	s. 149	515		s. 32	554
	s. 150	515		s. 33	554
	s. 151	516		s. 34	555
12 & 13 Vict. c. 48,	c. 78,	s. 5		s. 35	555
	c. 88,	s. 5		s. 36	555
	c. 80,	s. 18		s. 37	555
		s. 1		s. 38	556
		s. 2		s. 39	556
		s. 3		s. 40	556
	c. 94,	s. 8		s. 41	556
		s. 10		s. 42	556
		s. 4		s. 43	557
				s. 44	557
13 & 14 Vict. c. 21,				s. 45	557
	c. 37				
		s. 2		c. 50	374
		s. 9		c. 55,	s. 9
	c. 91,	s. 11			s. 10
14 & 15 Vict. c. 19,		s. 105			s. 19
	c. 28,	s. 1		c. 92,	s. 3
		s. 2			s. 4
		s. 3			s. 5
		s. 4			s. 6
		s. 5		c. 97,	s. 25
		s. 6		c. 99,	s. 8
		s. 7			s. 16
		s. 8		c. 100	
		s. 9			s. 1
c. 34,		s. 10			s. 5
		s. 11			s. 7
		s. 12			s. 9
		s. 13			s. 12
		s. 14			s. 18
		s. 15			s. 19
		s. 16			s. 20
		s. 17			s. 21
		s. 18			s. 22
		s. 1			s. 23
		s. 2			s. 24
		s. 3			21, 22, 23, 33, 301

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c. 130,	s. 5	32		s. 15	718
15 & 16 Vict. c. 42,	s. 13	463		s. 16	718
c. 50,	s. 34	966		s. 17	718
c. 51,	s. 5	825		s. 18	719
	s. 51	826		s. 19	719
c. 52,	s. 14	418		s. 20	719
c. 56		892		s. 21	720
	s. 1	892		s. 22	720
	s. 2	892		s. 23	720
	s. 3	892		s. 24	720
	s. 4	892		s. 25	721
	s. 5	892		s. 26	721
	s. 6	892		s. 27	721
	s. 7	892		s. 28	721
	s. 8	892		s. 29	721
	s. 9	892		s. 30	722
	s. 10	892		s. 31	722
	s. 11	892		s. 32	722
	s. 12	892		s. 33	722
	s. 13	892		s. 34	722
	s. 14	892		s. 35	723
	s. 15	892		s. 36	723
	s. 16	892		s. 37	723
c. 76	s. 104	84		s. 38	723
	s. 105	84		s. 39	724
	s. 106	84		s. 40	724
	s. 115	84	c. 97,	s. 1	601
c. 77,	s. 13	197		s. 2	601
16 & 17 Vict. c. 15,	s. 2	1141, 1146		s. 3	602
	s. 3	1144		s. 4	602
c. 41,	s. 1	545		s. 5	603
	s. 2	545		s. 6	603
	s. 3	545		s. 7	603
	s. 4	545		s. 8	604
	s. 5	545		s. 9	604
	s. 6	546		s. 10	605
	s. 7	546		s. 11	605
	s. 8	546		s. 12	606
	s. 9	546		s. 13	606
	s. 10	546		s. 14	606
	s. 11	547		s. 15	607
	s. 12	547		s. 16	607
	s. 13	547		s. 17	608
	s. 14	547		s. 18	608
c. 68,	s. 1	1157		s. 19	608
	s. 2	1159		s. 20	608
	s. 3	1159		s. 21	609
	s. 6	1144		s. 22	609
	s. 7	1142		s. 23	609
	s. 8	1142		s. 24	609
c. 71		1025		s. 25	610
c. 95		257		s. 26	610
c. 96,	s. 1	714		s. 27	610
	s. 2	714		s. 28	610
	s. 3	714		s. 29	611
	s. 4	714		s. 30	611
	s. 5	715		s. 31	612
	s. 6	716		s. 32	613
	s. 7	716		s. 33	613
	s. 8	716		s. 34	613
	s. 9	716		s. 35	613
	s. 10	717		s. 36	614
	s. 11	717		s. 37	614
	s. 12	717		s. 38	614
	s. 13	718		s. 39	615

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	s. 41		s. 107
	s. 42		s. 108
	s. 43		s. 109
	s. 44		s. 110
	s. 45		s. 111
	s. 46		s. 112
	s. 47		s. 113
	s. 48		s. 114
	s. 49		s. 115
	s. 50		s. 116
	s. 51		s. 117
	s. 52		s. 118
	s. 53		s. 119
	s. 54		s. 120
	s. 55		s. 121
	s. 56		s. 122
	s. 57		s. 123
	s. 58		s. 124
	s. 59		s. 125
	s. 60		s. 126
	s. 61		s. 127
	s. 62		s. 128
	s. 63		s. 129
	s. 64		s. 130
	s. 65		s. 131
	s. 66		s. 132
	s. 67		s. 133
	s. 68		s. 134
	s. 69		s. 135
	s. 70		s. 136
	s. 71	c. 99,	s. 1
	s. 72		s. 2
	s. 73		s. 3
	s. 74		s. 4
	s. 75		s. 5
	s. 76		s. 6
	s. 77		s. 7
	s. 78		s. 8
	s. 79		s. 9
	s. 80		s. 10
	s. 81		s. 11
	s. 82		s. 12
	s. 83		s. 13
	s. 84		s. 14
	s. 85		s. 15
	s. 86		s. 35
	s. 87		s. 36
	s. 88		s. 37
	s. 89		s. 38
	s. 90	17 & 18 Vict. c. 57,	
	s. 91	c. 102,	s. 1
	s. 92		s. 2
	s. 93		s. 3
	s. 94		s. 4
	s. 95		s. 5
	s. 96		s. 6
	s. 97		s. 7
	s. 98		s. 8
	s. 99		s. 11
	s. 100		s. 9
	s. 101		s. 10
	s. 102		s. 12
	s. 103		s. 13
	s. 104		s. 14
	s. 105	c. 104,	s. 478

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17 & 18 Vict. c. 104,	s. 479	255	18 & 19 Vict. c. 70,	s. 17	361
	s. 520	255		s. 18	361
c. 105,	s. 2	966		s. 19	361
	s. 3	967		s. 20	361
	s. 4	967		s. 21	361
	s. 5	967		s. 22	361
	s. 6	968		s. 23	362
	s. 7	968		s. 24	362
	s. 8	968		s. 25	362
	s. 9	968		s. 26	362
	s. 10	968			
	s. 11	969	c. 105,	s. 1	663, 728
	s. 12	969		s. 2	663, 728
	s. 13	969		s. 3	664, 728
	s. 14	969		s. 4	664, 728
	s. 15	970		s. 5	664, 728
	s. 16	970		s. 6	664, 728
	s. 17	970		s. 7	665, 728
	s. 18	970		s. 8	665, 728
	s. 19	970		s. 9	665, 728
	s. 20	970		s. 10	665, 728
	s. 22	971		s. 11	666, 728
	s. 29	971		s. 12	666, 728
	s. 34	971		s. 13	666, 728
	s. 45	971		s. 14	667, 728
	s. 46	972		s. 15	667, 728
	s. 47	972		s. 16	729
	s. 48	972		s. 17	729
	s. 49	972		s. 18	729
	s. 50	973		s. 19	729
	s. 51	973			
	s. 57	973	c. 116,	s. 1	1034
	s. 58	973		s. 2	1034
c. 125,	s. 20	1076, 1222		s. 3	1034
	s. 21	1076, 1222		s. 4	1034
	s. 103	1076		s. 5	1034
18 Vict. c. 27,	s. 1	1023		s. 6	1034
	s. 27	1023		s. 7	1035
	s. 28	1024		s. 8	1335
	s. 29	1025		s. 9	1035
	s. 30	1025		s. 10	1035
	s. 31	1025		s. 11	1035
	s. 32	1025		s. 12	1035
18 & 19 Vict. c. 57,	s. 1	975		s. 13	1036
	s. 2	975		s. 14	1036
	s. 3	976		s. 15	1036
	s. 4	976	c. 121,	s. 1	1036
	s. 7	976		s. 2	1036
c. 63,	s. 18	27, 304		s. 3	1037
c. 70		355		s. 4	1037
	s. 1	356		s. 5	1037
	s. 2	356		s. 6	1038
	s. 3	356		s. 7	1038
	s. 4	356		s. 8	1038
	s. 5	357		s. 9	1038
	s. 6	358		s. 10	1038
	s. 7	358		s. 11	1038
	s. 8	358		s. 12	1039
	s. 9	359		s. 13	1040
	s. 10	359		s. 14	1041
	s. 11	359		s. 15	1041
	s. 12	359		s. 16	1041
	s. 13	359		s. 17	1042
	s. 14	360		s. 18	1042
	s. 15	360		s. 19	1042
	s. 16	360		s. 20	1043
				s. 21	1043
				s. 22	1043

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	s. 24	1045		s. 2	1204
	s. 25	1045		c. 54,	35
	s. 26	1046		s. 1	35
	s. 27	1046		s. 2	35
	s. 28	1046		s. 3	35
	s. 29	1047		c. 87,	668
	s. 30	1047		c. 119,	875
	s. 31	1047		s. 1	875
	s. 32	1047		s. 2	876
	s. 33	1047		s. 3	876
	s. 34	1047		s. 4	877
	s. 35	1048		s. 5	877
	s. 36	1048		s. 6	877
	s. 37	1048		s. 7	877
	s. 38	1048		s. 8	878
	s. 39	1048		s. 9	878
	s. 40	1048		s. 10	878
	s. 41	1049		s. 11	878
	s. 42	1049		s. 12	879
	s. 43	1049		s. 13	879
	s. 44	1049		s. 14	879
	s. 45	1049		s. 15	879
	s. 46	1050		s. 16	880
c. 126,	s. 1	291		s. 17	880
	s. 2	291		s. 18	880
	s. 3	291		s. 19	880
	s. 4	292		s. 20	881
	s. 5	292		s. 21	881
	s. 6	292		s. 22	881
	s. 7	292		s. 23	882
	s. 8	292		s. 24	882
	s. 9	293		s. 25	882
	s. 10	293		s. 26	882
	s. 11	293	20* Vict. c. 19,	s. 9	857
	s. 12	293		s. 10	857
	s. 13	293	20 & 21 Vict. c. 3,	s. 1	1216
	s. 14	293		s. 2	1214
	s. 15	293		s. 3	262, 1217
	s. 16	293		s. 4	1217
	s. 17	293		s. 5	1217
	s. 18	294		s. 6	298, 1217
	s. 19	294		s. 7	1217
	s. 20	294		c. 43	141
	s. 21	294		s. 9	157
	s. 22	294		c. 83,	1088
	s. 23	294		s. 1	1089
	s. 24	294		s. 2	1089
c. 132,	s. 1	560		s. 3	1089
	s. 2	560		s. 4	1090
	s. 3	561		s. 5	1090
	s. 4	561	21 & 22 Vict. c. 48		122
	s. 5	561		c. 73,	192, 740
	s. 6	561		s. 1	740
	s. 9	562		s. 2	740
	s. 10	562		s. 3	740
	s. 11	562		s. 4	740
	s. 12	562		s. 5	740
	s. 13	563		s. 6	740
	s. 14	563		s. 7	740
	s. 15	563		s. 8	740
	s. 16	563		s. 9	740
	s. 17	563		s. 10	740
& 20 Vict. c. 15,	s. 5	940		s. 11	740
	s. 8	940		s. 12	740
	s. 9	941		s. 13	740
				s. 14	740
			c. 90		882
				s. 14	885
				s. 24	885

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	s. 29	886		s. 59	491
	s. 35	886		s. 61	510
	s. 36	886		s. 62	510
	s. 37	817		s. 63	510
	s. 38	817		s. 64	510
	s. 39	817		s. 65	510
	s. 40	817		s. 66	511
	s. 41	817		s. 67	511
	s. 42	888		s. 68	516
c. 97		1050		s. 69	517
c. 98,	s. 2	418		s. 70	518
	s. 3	419		s. 71	518
	s. 4	419		s. 72	518
	s. 5	419		s. 73	518
	s. 6	419		s. 74	519
	s. 7	419		s. 75	475
	s. 8	419, 499		s. 76	499
	s. 9	419		s. 77	511
	s. 10	489		s. 78	491
	s. 11	442		s. 79	512
	s. 12	428		s. 80	512
	s. 13	429		s. 81	513
	s. 14	430		s. 82	519
	s. 15	430	c. 110		1159
	s. 16	430		s. 5	197
	s. 17	431	22 Vict. c. 12,	s. 4	888
	s. 18	431		c. 21,	
	s. 19	432	22 & 23 Vict. c. 14,	s. 32	1204
	s. 20	432		s. 33	1205
	s. 21	433		s. 34	1205
	s. 22	433		s. 35	1205
	s. 23	433		c. 17,	5, 278
	s. 24	435		c. 35,	238
	s. 25	436		s. 29	239
	s. 26	437, 442		s. 30	239
	s. 27	437		s. 31	240
	s. 28	437	c. 66,	s. 1	399
	s. 29	448		s. 2	399
	s. 31	448		s. 3	399
	s. 32	458		s. 4	400
	s. 33	453, 456		s. 5	401
	s. 34	456		s. 6	401
	s. 35	467		s. 7	401
	s. 36	463, 468		s. 8	402
	s. 37	494		s. 9	402
	s. 38	464		s. 10	402
	s. 39	464		s. 11	402
	s. 40	464		s. 12	403
	s. 41	465		s. 13	403
	s. 42	465		s. 14	403
	s. 43	466		s. 15	404
	s. 44	496		s. 16	404
	s. 45	496		s. 17	404
	s. 46	496		s. 18	404
	s. 47	497		s. 19	405
	s. 48	497		s. 20	405
	s. 49	473		s. 21	405
	s. 50	497		s. 22	405
	s. 51	471		s. 23	406
	s. 52	471		s. 24	406
	s. 53	471		s. 25	406
	s. 54	479, 484		s. 26	407
	s. 55	485		s. 27	407
	s. 56	487		s. 28	407
	s. 57	490	23 Vict. c. 24,	s. 1	857
				s. 2	858

## TABLE OF STATUTES CITED IN VOL. III.

	PAGE		PAGE
23 & 24 Vict. c. 30	413	23 & 24 Vict. c. 151,	1000
s. 1	535	s. 12	1000
s. 2	536	s. 13	1000
s. 3	536	s. 14	1002
s. 4	536	s. 15	1002
s. 5	536	s. 16	1003
s. 6	536	s. 17	1003
s. 7	536	s. 18	1004
c. 51	373	s. 19	1004
c. 75,	594	s. 20	1004
s. 1	594	s. 21	1005
s. 2	594	s. 22	1005
s. 3	595	s. 23	1006
s. 4	595	s. 24	1006
s. 5	595	s. 25	1006
s. 6	595	s. 26	1006
s. 7	595	s. 27	1006
s. 8	596	s. 28	1006
s. 9	596	s. 29	1006
s. 10	596	s. 30	1007
s. 11	596	s. 31	1007
s. 12	596	s. 4	858
s. 13	596	24 Vict. c. 16,	668
s. 14	597	24 & 25 Vict. c. 55,	668
s. 15	597	s. 6	668
c. 77,	1056	s. 7	433
s. 1	1056	c. 61,	433
s. 2	1056	s. 1	433
s. 3	1056	s. 2	448
s. 4	1056	s. 4	449
s. 5	1057	s. 5	449
s. 6	1057	s. 6	449
s. 7	1058	s. 7	449
s. 8	1058	s. 8	495
s. 9	1058	s. 9	495
s. 10	1058	s. 10	498
s. 11	1058	s. 11	487
s. 12	1059	s. 12	487
s. 13	1059	s. 13	499
s. 14	1059	s. 14	464, 466
s. 15	1059	s. 16	467
s. 16	1059	s. 17	476
c. 94,	976	s. 18	491
s. 1	976	s. 19	472
s. 2	976	s. 20	474
s. 3	977	s. 21	476
s. 4	977	s. 22	487
s. 5	977	s. 23	495
s. 6	977	s. 26	513
s. 8	978	s. 27	418
s. 9	978	s. 28	520
s. 10	978	s. 29	1076, 1223
s. 11	978	c. 66,	1076, 1223
s. 12	978	s. 1	18
s. 13	978	s. 2	224
s. 15	979	c. 94,	288
c. 136,	197	c. 95	225
c. 146	399	c. 96	226
c. 151,	997	s. 1	210, 227
s. 1	997	s. 2	228
s. 2	998	s. 3	8, 301
s. 3	998	s. 4	8, 228
s. 4	998	s. 5	229
s. 5	998	s. 6	229
s. 6	998	s. 7	217, 230
s. 7	999	s. 8	230
s. 8	999	s. 10	231
s. 9	999	s. 11	231
s. 10	999	s. 12	231
s. 11	1000	s. 13	231
		s. 14	232

## TABLE OF STATUTES CITED IN VOL. III.

		PAGE			PAGE
24 & 25 Vict. c. 96,	s. 15	232	24 & 25 Vict. c. 96,	s. 99	284
	s. 16	232		s. 100	284
	s. 17	233		s. 101	287
	s. 18	233		s. 102	287
	s. 19	233		s. 103	287
	s. 21	234		s. 104	288
	s. 22	234		s. 106	288
	s. 23	234		s. 107	289
	s. 24	234		s. 108	289
	s. 25	235		s. 109	289
	s. 26	235		s. 110	289
	s. 28	238		s. 111	290
	s. 39	217		s. 112	290
	s. 44	245		s. 113	294
	s. 45	246		s. 114	19, 21, 295
	s. 46	246		s. 115	19, 296
	s. 47	247		s. 116	296
	s. 48	247		s. 117	297
	s. 49	247		s. 118	298
	s. 50	248		s. 119	298
	s. 51	248		s. 120	298
	s. 52	249		s. 121	298
	s. 54	249		s. 122	299
	s. 55	250		s. 123	299
	s. 56	250, 251	•	c. 97	767
	s. 57	251		s. 1	768
	s. 58	252		s. 2	768
	s. 60	253		s. 3	769
	s. 61	253		s. 4	771
	s. 62	253		s. 5	771
	s. 63	253		s. 6	771
	s. 64	218, 255		s. 7	771
	s. 65	218, 255		s. 8	772
	s. 66	218, 255		s. 9	773
	s. 67	256		s. 10	773
	s. 68	204, 257		s. 11	773
	s. 69	261		s. 12	775
	s. 70	261		s. 13	265, 775
	s. 71	262		s. 14	775
	s. 72	264		s. 15	776
	s. 73	264		s. 16	777
	s. 74	264		s. 17	777
	s. 75	209, 265		s. 18	777
	s. 76	209, 266		s. 19	778
	s. 77	209, 266		s. 20	778
	s. 78	266		s. 21	778
	s. 79	267		s. 22	778
	s. 80	267		s. 23	779
	s. 81	268		s. 24	779
	s. 82	268		s. 25	780
	s. 83	268		s. 26	780
	s. 84	268		s. 27	780
	s. 85	269		s. 28	781
	s. 86	269		s. 29	781
	s. 87	269		s. 30	782
	s. 88	209, 273		s. 31	782
	s. 89	279		s. 32	783
	s. 90	273, 279		s. 33	783
	s. 91	279		s. 34	783
	s. 92	92, 282		s. 35	784
	s. 93	282		s. 42	32
	s. 94	282		c. 98,	745
	s. 95	283		c. 100	749
	s. 96	283		s. 11	758
	s. 97	284		s. 12	758
	s. 98	284		s. 14	753
				s. 15	754

## TABLE OF STATUTES CITED IN VOL. III.

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		PAGE			PAGE
24 & 25 Vict. c. 100,	s. 18	754	24 & 25 Vict. c. 110,	s. 11	907
	s. 19	754		s. 12	907
	s. 20	754		c. 133,	182
	s. 21	245, 757		s. 48	183
	s. 22	757		s. 49	183
	s. 23	750		s. 50	183
	s. 24	750		s. 51	183
	s. 25	750		s. 52	183
	s. 28	758		s. 53	183
	s. 29	759		s. 54	183
	s. 30	759		s. 55	183
	s. 32	784		s. 56	183
	s. 34	785		s. 57	183
	s. 36	785		s. 58	183
	s. 37	785		s. 59	184
	s. 38	786		s. 60	184
	s. 39	786		s. 61	184
	s. 40	787		s. 62	184
	s. 41	787		s. 63	184
	s. 42	788		s. 64	184
	s. 43	789		s. 65	184
	s. 44	789		s. 66	184
	s. 45	789		s. 67	184
	s. 46	789		s. 68	184
	s. 47	790		s. 69	184
	s. 48	790		s. 70	184
	s. 49	790		s. 71	184
	s. 50	790		s. 72	184
	s. 51	791		s. 73	184
	s. 52	791		s. 74	184
	s. 53	792		s. 75	184
	s. 54	792		s. 76	184
	s. 55	792		s. 77	184
	s. 56	793		s. 78	184
	s. 57	793		s. 79	185
	s. 58	793		s. 80	185
	s. 60	761		s. 81	185
	s. 61	794		s. 82	185
	s. 62	794		s. 83	185
	s. 63	795	25 Vict. c. 18,	s. 1	181
	s. 64	795		s. 2	182
	s. 65	795	25 & 26 Vict. c. 50,	s. 7	72
	s. 66	746, 795		s. 8	72
	s. 67	747, 796		s. 9	72
	s. 68	747, 796		s. 10	73
	s. 69	747, 796		c. 61,	144
	s. 70	747, 797		c. 63,	261
	s. 71	748, 797		c. 66,	1261
	s. 72	748, 797		s. 2	1261
	s. 73	748, 797		s. 3	1262
	s. 74	748, 798		s. 4	1262
	s. 75	748, 798		s. 5	1262
	s. 76	749, 798		s. 6	1262
	s. 77	749, 798		s. 7	1263
	s. 78	749, 798		s. 8	1263
	s. 79	749, 798		s. 9	1263
c. 110,	s. 1	904		s. 10	1263
	s. 2	904		c. 79,	1007
	s. 3	904		s. 2	1007
	s. 4	904		s. 3	1007
	s. 5	904		s. 4	1007
	s. 6	905		s. 5	1008
	s. 7	905		s. 6	1008
	s. 8	905		s. 7	1008
	s. 9	906		s. 8	1008
	s. 10	907		c. 88,	898
				s. 1	898

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	PAGE		PAGE
25 & 26 Vict. c. 88,	s. 2 899	25 & 26 Vict. c. 111,	s. 41 675, 735
	s. 3 899		s. 42 675, 735
	s. 4 900		s. 43 675, 735
	s. 5 900		s. 44 675, 735
	s. 6 900		s. 45 675, 736
	s. 7 901		s. 46 675, 736
	s. 8 901		s. 47 675, 736
	s. 9 901		s. 48 675, 736
	s. 10 902	26 & 27 Vict. c. 17,	s. 2 434
	s. 11 902		s. 3 434
	s. 12 902		s. 4 434
	s. 13 902		s. 5 435
	s. 14 902		s. 7 435
	s. 15 902	c. 29,	s. 2 1153, 1165
	s. 16 903		s. 3 1166
	s. 18 903		s. 4 1166
	s. 19 903		s. 5 1165
	s. 20 903		s. 6 1165
	s. 25 903		s. 7 1165
c. 107,	s. 4 71		s. 11 1167
	s. 5 72	c. 44	245
	s. 9 74	c. 65,	s. 1 979
	s. 11 81		s. 7 980
	s. 12 103		s. 25 980
	s. 13 82		s. 26 980
	s. 14 71, 82		s. 27 981
c. 111,	s. 1 668, 729		s. 28 981
	s. 2 669, 729		s. 29 981
	s. 3 669, 729		s. 30 981
	s. 4 669, 729		s. 36 981
	s. 5 670, 729		s. 37 982
	s. 6 670, 729		s. 38 982
	s. 7 670, 729		s. 42 983
	s. 8 670, 729		s. 43 983
	s. 9 671, 729		s. 44 983
	s. 10 671, 729		s. 45 983
	s. 11 671, 729	c. 70,	s. 7 432
	s. 12 672, 729	c. 77	126
	s. 13 672, 729	c. 97,	s. 1 737
	s. 14 672, 729		s. 2 737
	s. 15 672, 730		s. 3 738
	s. 16 672, 730		s. 4 738
	s. 17 672, 731		s. 5 738
	s. 18 672, 731		s. 6 739
	s. 19 672, 731		s. 7 739
	s. 20 673, 731	c. 103,	s. 1 224
	s. 21 673, 731	c. 110	676
	s. 22 673, 731		s. 1 677
	s. 23 673, 731		s. 2 677
	s. 24 673, 731		s. 3 677
	s. 25 732	c. 113	1279
	s. 26 673, 732		s. 1 1279
	s. 27 674, 732		s. 2 1279
	s. 28 674, 732		s. 3 1279
	s. 29 674, 732	c. 117,	s. 1 1060
	s. 30 674, 733		s. 2 1060
	s. 31 674, 733		s. 3 1060
	s. 32 674, 733		s. 4 1060
	s. 33 674, 733		s. 5 1061
	s. 34 674, 733	27 & 28 Vict. c. 29,	s. 1 597
	s. 35 674, 733		s. 2 598
	s. 36 674, 733		s. 3 593
	s. 37 674, 734		s. 4 593
	s. 38 674, 734		s. 5 593
	s. 39 674, 734		s. 6 593
	s. 40 675, 734		s. 7 593

## TABLE OF STATUTES CITED IN VOL. III.

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		PAGE			PAGE
27 & 28 Vict. c. 47		228, 229	29 & 30 Vict. c. 90,	s. 20	1062
	s. 1	1217		s. 21	1062
	s. 2	249, 1217		s. 22	1063
	s. 3	1218		s. 23	1063
	s. 4	1218		s. 24	1063
	s. 5	1218		s. 25	1063
	s. 6	1219		s. 26	1063
	s. 7	1219		s. 27	1064
	s. 8	1219		s. 28	1064
	s. 9	1219		s. 29	1064
	s. 10	1219		s. 30	1064
c. 56,	s. 6	1183		s. 31	1064
c. 115,	s. 1	1280		s. 32	1065
	s. 2	1280		s. 33	1065
	s. 3	1280		s. 34	1065
	s. 4	1280		s. 35	1065
28 & 29 Vict. c. 36,	s. 2	1115		s. 36	1066
	s. 3	1117		s. 37	1066
c. 75,	s. 2	521		s. 38	1066
	s. 4	526		s. 39	1067
	s. 5	527		s. 40	1067
	s. 7	531		s. 41	1067
	s. 8	531		s. 42	461, 1017
	s. 9	531		s. 43	448, 498, 1067
	s. 10	531		s. 44	474, 1067
	s. 11	512		s. 45	533, 1067
	s. 12	512		s. 46	428, 437, 534, 1067
	s. 14	512		s. 47	463, 476, 1067
	s. 15	512		s. 48	534, 1067
	s. 16	512		s. 49	450, 534, 1067
c. 80,	s. 1	677		s. 50	472, 534, 1067
	s. 2	677		s. 51	1067
	s. 3	678		s. 52	1068
c. 90,	s. 37	533		s. 53	1068
c. 126,	s. 41	578		s. 54	534, 1068
29 Vict. c. 28,	s. 1	557		s. 55	523, 1068
	s. 2	557	c. 93,	s. 47	475
	s. 3	557	c. 98,	s. 1	42
	s. 4	558		s. 2	42
	s. 5	559		s. 3	42
	s. 6	560		s. 4	42
	s. 7	560		s. 5	42
	s. 8	560		s. 6	42
	s. 9	560		s. 7	42
	s. 10	560		s. 8	42
29 & 30 Vict. c. 41,	s. 1	1061		s. 9	42
	s. 2	1061		s. 10	42
	s. 3	1061		s. 11	42
c. 60,	s. 6	979		s. 12	42
c. 82		401		s. 13	43
c. 90,	s. 2	522		s. 14	44
	s. 3	523		s. 15	44
	s. 4	523		s. 16	44
	s. 5	524		s. 17	44
	s. 6	524		s. 18	45
	s. 7	524		s. 19	45
	s. 8	527		s. 20	45
	s. 9	527		s. 21	46
	s. 10	527		s. 22	46
	s. 13	1058		s. 23	46
	s. 14	1061		s. 24	46
	s. 15	1061		s. 25	46
	s. 16	1061		s. 26	46
	s. 17	1061		s. 27	46
	s. 18	1061		s. 28	47
	s. 19	1062		s. 29	47



## TABLE OF STATUTES CITED IN VOL. III.

		PAGE			PAGE
29 & 30 Vict. c. 98,	s. 30	47	30 & 31 Vict. c. 113,	s. 14	526
	s. 31	47		s. 15	533
	s. 32	47		s. 16	522, 533
	s. 33	48		s. 17	530
	s. 34	48		s. 18	530
	s. 35	48	c. 115,	s. 2	134
	s. 36	48		s. 10	533
	s. 37	48	c. 116,		941
	s. 38	48		s. 1	838
	s. 39	49	31 & 32 Vict. c. 51,	s. 2	838
	s. 40	49		s. 3	838
	s. 41	50		s. 4	838
	s. 42	50	c. 58,	s. 15	1159
	s. 43	50		s. 18	1153, 1156
	s. 44	50		s. 19	1119
	s. 45	50		s. 23	1140
	s. 46	50		s. 24	1154
	s. 47	50		s. 30	1119
	s. 48	51	c. 66,	s. 1	1263
	s. 49	51		s. 2	1263
	s. 50	51		s. 3	1263
	s. 51	51		s. 4	1264
	s. 52	51		s. 5	1264
	s. 53	51		s. 6	1264
	s. 54	51		s. 7	1264
c. 99,	s. 11	529		s. 8	1265
	s. 12	529	c. 72,	s. 1	1092
c. 114,	s. 13	530		s. 2	1092
	s. 1	360		s. 3	1092
	s. 2	357		s. 4	1092
	s. 3	357		s. 5	1092
	s. 4	357		s. 6	1092
	s. 5	357		s. 7	1092
	s. 6	357		s. 8	1092
	s. 10	360		s. 9	1093
30 & 31 Vict. c. 12,	s. 1	600		s. 10	1093
	s. 2	600		s. 11	1093
	s. 3	600		s. 12	1093, 1094
	s. 4	600		s. 13	1094
	s. 5	600		s. 14	1094
	s. 6	600		s. 15	1095
c. 35		5		s. 16	1095
	s. 1	279	c. 115,	s. 4	528
	s. 8	68, 70		s. 5	528
	s. 9	289		s. 6	531
c. 62,		1097		s. 7	528
c. 102,	s. 6	1118		s. 8	534
	s. 23	1163		s. 9	535
	s. 30	1118	c. 121,	s. 15	1281
	s. 34	1143, 1155		s. 16	1281
	s. 37	1144		s. 17	1281
	s. 39	1147	c. 130,	s. 1	565
	s. 49	1163		s. 2	564
	s. 58	1167		s. 3	564
c. 113,	s. 2	523		s. 4	564
	s. 3	523, 532		s. 5	565
	s. 4	523, 532		s. 6	565
	s. 5	523, 532		s. 7	565
	s. 6	525		s. 8	565
	s. 7	523, 525		s. 9	565
	s. 8	525		s. 10	566
	s. 9	525		s. 11	566
	s. 10	525		s. 12	566
	s. 11	523, 526		s. 13	566
	s. 12	526		s. 14	567
	s. 13	522, 526		s. 15	567

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		PAGE			PAGE
31 & 32 Vict. c. 130,	s. 16	567	32 Vict. c. 4,	s. 79	924
	s. 17	567		s. 80	925
	s. 18	567		s. 81	925
	s. 19	567		s. 82	925
	s. 20	568		s. 83	925
	s. 21	568		s. 84	926
	s. 22	568		s. 85	926
	s. 23	568		s. 86	927
	s. 24	568		s. 87	928
	s. 25	569		s. 88	929
	s. 26	569		s. 89	929
	s. 27	569		s. 90	929
	s. 28	569		s. 91	929
	s. 29	569		s. 92	930
	s. 30	570		s. 95	930
	s. 31	570		s. 96	930
	s. 32	570		s. 97	931
	s. 33	570	c. 5,	s. 34	941
	s. 34	570		s. 47	941
	s. 35	570		s. 48	945
	s. 36	570		s. 50	945
	s. 37	570		s. 52	946
	s. 38	571		s. 53	946
	s. 39	571		s. 54	947
	s. 40	571		s. 55	948
	s. 41	571		s. 56	948
32 Vict. c. 4,		909		s. 57	949
	s. 18	910		s. 58	949
	s. 34	910		s. 59	949
	s. 35	911		s. 60	949
	s. 36	912		s. 61	949
	s. 37	912		s. 62	950
	s. 38	912		s. 63	950
	s. 39	913		s. 64	950
	s. 40	913		s. 65	951
	s. 41	914		s. 70	951
	s. 42	914		s. 71	951
	s. 43	914		s. 72	951
	s. 44	914		s. 75	952
	s. 45	914		s. 76	953
	s. 46	915		s. 77	954
	s. 47	915		s. 78	955
	s. 48	916		s. 79	956
	s. 49	916		s. 80	956
	s. 50	916		s. 82	957
	s. 57	917		s. 83	957
	s. 58	917		s. 84	957
	s. 63	918		s. 85	958
	s. 64	919		s. 86	959
	s. 65	920		s. 87	959
	s. 66	920		s. 88	960
	s. 67	920		s. 89	960
	s. 68	921		s. 91	960
	s. 69	922		s. 92	960
	s. 70	923		s. 93	961
	s. 71	923		s. 94	961
	s. 72	924		s. 95	961
	s. 73	924		s. 96	961
	s. 76	924			



## ADDENDA ET CORRIGENDA.

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*Page 65, note (d).*—All men enrolled, and officers and non-commissioned officers appointed, under the 30 & 31 Vict. c. 110, are by sect. 17 of that Act exempt from serving on juries.

*Page 212.*—By the 31 & 32 Vict. c. 116, s. 1, it is enacted that, if any person being a member of any copartnership, or being one of two or more beneficial owners of any money, goods, or effects, bills, notes, securities, or other property, shall steal or embezzle any such money, goods, or effects, bills, notes, securities, or other property of or belonging to any such copartnership, or to such joint beneficial owners, every such person shall be liable to be dealt with, tried, convicted, and punished for the same as if such person had not been or was not a member of such copartnership, or one of such beneficial owners.

*Page 291.*—By the 31 & 32 Vict. c. 116, s. 2, it is enacted, that all the provisions of the 18 & 19 Vict. c. 126, shall extend and be applicable to the offence of embezzlement by clerks, or servants or persons employed for the purpose or in the capacity of clerks or servants, and that the said Act shall thenceforth be read as if the said offence of embezzlement had been included therein.

*Page 293.*—By the 27 & 28 Vict. c. 80, s. 2, every sitting of two or more justices of the peace legally acting in and for the liberties of the Cinque Ports, or any part thereof, or of the district of Romney Marsh, at any place at which such sitting may for the time being be appointed to be held, shall be deemed to be a petty sessions of the peace, or Court of petty sessions, and the district for which the same is holden shall be deemed to be a petty sessional division; and any officer for the time being performing the duties usually performed by the clerk to the justices of petty sessions shall be deemed to be a clerk to the justices of petty sessions within the meaning of the ninth section of the Act 18 & 19 Vict. c. 126.

*Page 740.*—The thirteenth section of the 21 & 22 Vict. c. 73, is repealed by the 32 & 33 Vict. c. 34; and in place thereof it is enacted, that it shall be lawful for any stipendiary magistrate or police magistrate, with the approval of the secretary of state for the home department, on each occasion of this power being exercised, to appoint a deputy qualified as aforesaid for any period not exceeding three calendar months at one time, and every such deputy during the time for which he shall be so appointed shall have all the powers and perform all the duties of the stipendiary magistrate for whom he shall have been so appointed.

*Page 904, note (a).*—The 30 & 31 Vict. c. 119, is now repealed; a similar provision is, however, contained in sect. 9 of the 32 Vict. c. 12, which has been substituted for the 30 & 31 Vict. c. 119.

*Page 1017, et seq.*—The 6 & 7 Will. 4, c. 76, is repealed by the 32 &

Addenda et 33 Vict. c. 24, except sects. 1 to 4 (both inclusive), sects. 34 and 35, and  
Corrigenda. the schedule. The same Act, however, re-enacts sects. 29, 31, 34, part  
of 35, and 36.

*Page 1263.*—For “31 & 32 Vict. c. 66,” read “31 & 32 Vict. c. 56.”

*Page 1324.*—Sects. 15 to 33 (both inclusive) of the 39 Geo. 3, c. 79, and so much of sects. 34 to 39 as relates to the above-mentioned sections, are repealed by the 32 & 33 Vict. c. 24.

*Page 1328.*—The 51 Geo. 3, c. 65, is repealed by the 32 & 33 Vict. c. 24; but sect. 3 is re-enacted by the same Act.

*Page 1329.*—The 2 & 3 Vict. c. 12 is repealed by the 32 & 33 Vict. c. 24; but sects. 2, 3, and 4 are re-enacted by the same Act.

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THE  
JUSTICE OF THE PEACE  
AND  
PARISH OFFICER.

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**Indictment.**

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2. *Indictable Offences.*

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### I. Indictment, what.

What.

Indictment cometh of the French word *enditer*, and signifieth, in law, an accusation found by an inquest of twelve or more upon their oath. An indictment is always the suit of the Queen, and, as it were, her declaration; and the party who prosecutes it is a good witness to prove it. When such accusation is found by a grand jury, without any bill brought before them, and afterwards reduced to a form of indictment, it is called a *presentment*; and, when it is found by jurors returned to inquire of that particular offence only which is indicted, it is properly called an *inquisition*. (1 *Inst.* 126; 2 *Hawk.* c. 25, s. 1.)

An indictment is the most constitutional, regular, and safe mode of proceeding upon criminal charges.

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### II. What Offences are indictable.

All offences of a public nature indictable.

There can be no doubt but that all capital crimes whatsoever, and also all kinds of inferior crimes of a *public nature*, as misprisions and all other contempts, all disturbances of the peace, all oppressions, and all other misdemeanours whatsoever of a public, evil example against the common law, may be indicted. (2 *Hawk.* c. 25, s. 4.) Thus, all blasphemies against God, or the Christian religion, or the Holy Scriptures, are indictable at common law. So, all impostors in religion, and all malicious revilings in public derogation and contempt of the established religion, are punishable by the common law, inasmuch as they tend to a breach of the peace. Similar to these are all scandalous and open breaches of morality exhibited in the face of the people, such as was the conduct of one who exposed himself naked to the public view from a balcony in Covent Garden. (See *Sir C. Sedley's case*, 1 *Sid.* 168.) All offences of a public nature, that is, all such acts or attempts as tend to the prejudice of the community, are indictable. So are bribery at elections, seditious pamphlets, and all practices or attempts which tend to endanger the constitution, to bring the Queen or her Courts into contempt, to corrupt, mislead, and pervert public justice, or to prejudice the public good. (*Reg. v. Bykerdike*, 1 *M. & R.* 179; *Reg. v. Rowlands*, 2 *Den. C.C.* 364.) So all nuisances of a public nature are indictable, though

occasioned by an act in itself innocent, if the nuisance be the probable consequence of the act. (*R. v. Moore*, 3 *B. & Ad.* 184; 1 *Hawk.* c. 75, ss. 6, 7.) But no injuries of a private nature are indictable, unless they in some way concern the Queen. (2 *Hawk.* c. 25.) It is an indictable misdemeanour, to refuse or neglect to provide sufficient food or other necessities for any infant of tender years unable to provide for and take care of itself (whether such infant be child, apprentice, or servant), whom the party is obliged, by duty or contract, to provide for, so as thereby to injure its health. (*R. v. Friend*, *R. & R. C. C.* 20. See *R. v. Smith*, 2 *C. & P.* 449; *R. v. Smith*, 8 *C. & P.* 153; *R. v. Marriott*, 8 *C. & P.* 425.) But an injury to the health must be shown. (*Reg. v. Hogan*, 2 *Den. C.C.* 277; *Reg. v. Phillpot*, *Dears. C.C.* 179.)

So long as an act rests in *bare intention*, it is not punishable; except in the case of high treason, where, by the 25 *Edw.* 3, st. 5, c. 2, *voluntas reputabatur pro facto*; but, in all cases where the intent to commit a crime is manifested by any overt act, the party may be indicted for an attempt to commit the offence (1 *Deacon*, 643; *Reg. v. Martin*, 2 *Mood. C. C.* 123; 9 *C. & P.* 213, 215), even though the act itself would otherwise have been innocent but for such criminal intent. (*Per Lord Mansfield*, *Schofield's case*, *Cald.* 397.) Thus, an attempt to commit felony is, in many cases, a misdemeanour; and an attempt to commit even a misdemeanour has been decided in many cases to be itself a misdemeanour. And the mere *soliciting* another to commit a felony is a sufficient act or attempt to constitute the misdemeanour. Thus, it is an indictable offence to incite and solicit a servant to steal his master's goods, though the servant do not steal the goods, and no other act be done except the soliciting and exciting. (*R. v. Higgins*, 2 *East*, 5. See "*Attempts*," *Vol. I.*)

A person may be indicted for *unlawfully* and *injuriously* carrying a child infected with the smallpox along a public highway, in which persons are passing, and near to the habitations of the Queen's subjects. (*R. v. Vantandillo*, 4 *M. & S.* 73.) And it has been held an indictable offence in an apothecary *unlawfully* and *injuriously* to inoculate children with the smallpox, and, while they are sick of it, *unlawfully* and *injuriously* to cause them to be carried along a public street. The defendant in this case was sentenced to six months' imprisonment. (*R. v. Burnet*, 4 *M. & S.* 272.)

But an indictment will not lie for a mere private injury against an individual: as, for enticing away his apprentice (*Reg. v. Daniel*, 1 *Salk.* 380); entering his close, digging the ground, erecting a shed thereon, expelling him and keeping him out of possession (*R. v. Storr*, 3 *Burr.* 1698, 1731); pulling the thatch off a dwelling-house of which he was in peaceable possession (*R. v. Atkins*, 3 *Burr.* 1706, 1707); excluding commoners by enclosing (*Cro. Eliz.* 90); or the like: the remedy for injuries of this description being by action only. If, however, there were any conspiracy in the case, then an indictment might be supported for it (*R. v. Bykerdike*, 1 *M. & R.* 179. See "*Conspiracy*," *Vol. I.*); and so if they concern the Queen. (*Supra.*)

Private injury.

So, an indictment will not lie for a mere breach of the bye-laws or customs of a corporation. (*R. v. Sharples*, 4 *T. R.* 777; 3 *Salk.* 188. See *Com. Dig. Indictment*, (E). And it does not follow that, because an action cannot be supported, an indictment lies. (*R. v. Richards*, 8 *T. R.* 634.)

Breach of bye-law.

See further, as to what offences are indictable, the different titles of offences throughout this work.

Also, it seems to be a good general ground that, wherever a *statute* prohibits a matter of *public* grievance to the liberties and security of a subject, or commands a matter of *public* convenience, as the repairing of the common streets of a town, an offender against such statute is punishable, not only at the suit of the party grieved, but also by way of indictment for his contempt of the statute, unless such method of pro-

Offences against public statutes.



2. *Indictable Offences.*

Offences against private statutes.

Statutes pointing out remedies.

ceeding do manifestly appear to be excluded by it. (2 *Hawk.* c. 25, s. 4; *R. v. Davis*, *Say*. 133.)

But, if a statute extend only to *private* persons, or if it extend to all persons in general, but chiefly concerns disputes of a private nature, as those relating to distresses made by lords on their tenants, it is said that offences against such statutes will hardly bear an indictment. (*Id.*)

Also, where a statute makes a *new* offence, by prohibiting and making unlawful anything that was lawful before, and appoints a particular method of proceeding, without mentioning an indictment, it seemeth to be settled at this day that no indictment can be maintained. (*R. v. Buck*, 2 *Str.* 679; *R. v. Robinson*, 2 *Burr.* 803; *R. v. Wright*, 1 *Burr.* 544; 2 *Hawk.* c. 26, s. 4; 1 *Rep.* 67.) But Lord *Hale* (2 *Hale*, 171) distinguishes upon this, and says that, if a statute prohibit any act to be done, and by a *substantive* and distinct clause give a recovery by action of debt, bill, plaint, or information, but mentions not an indictment, the party may be indicted upon the *prohibitory clause*, and thereupon fined, but not to recover the penalty; but then it seems the fine ought not to exceed the penalty. But, if the Act be not prohibitory, but only that, if any person shall do such a thing, he shall forfeit so much, to be recovered by action of debt, bill, plaint, or information, then he cannot be indicted for it, but the proceeding must be by action, bill, plaint, or information. (*Vide R. v. Harris*, 4 *T. R.* 202.) Also, where a statute adds a further penalty to an offence prohibited by the *common law*, and prescribes a partial remedy by a summary proceeding, there either method may be pursued. (2 *Hawk.* c. 25, s. 4; 2 *Burr.* 803; *Reg. v. Buchanan*, 8 *Q. B.* 883.) Therefore, it was held indictable to disobey an order of sessions for the maintenance of relations under the stat. 43 *Eliz.* c. 2, though that statute gives a penalty; for, before the statute of Elizabeth, disobedience to an order of sessions was an offence indictable at common law. (*R. v. Robinson*, 2 *Burr.* 799. And see *R. v. Carlisle*, 3 *B. & Ald.* 161; *R. v. Hollis*, 2 *Stark. N. P.* 536.) The true rule of *distinction* seems to be that, where the offence intended to be guarded against by a statute was *punishable* before the making of such statute prescribing a particular method of punishing it, there such particular remedy is cumulative, and does *not* take away the former remedy. But, where the statute only enacts "that the doing some act not punishable before shall for the future be punishable in such and such a particular manner, there it is necessary that such particular method, by such Act prescribed, *must be specifically pursued*; and not the common-law method of an indictment." (*Per Lord Mansfield, C.J., R. v. Robinson*, 2 *Burr.* 805.) An Act of Parliament prohibited the erection or continuance of any building within ten feet of the road, and declared that the footpaths should be subject to the Act and be part of the road. It further enacted that, if any such building should be erected or continued contrary to the Act, it should be deemed a common nuisance. By another clause, two magistrates were empowered to convict the proprietor and occupier of such building, and to make an order for the removal thereof:—Held, that, notwithstanding the latter clause, the party who erected or continued a building contrary to the Act might be indicted for a nuisance. (*R. v. Gregory*, 5 *B. & Ad.* 555; 2 *N. & M.* 478.) In *R. v. Balme* (2 *Cowp.* 648) the defendants were indicted for disobeying an order of justices on the statute 13 *Geo.* 3, c. 78, for the widening of a highway. It was objected that, a summary method of proceeding before the justices being directed by the statute for the recovery of a penalty, the prosecution ought to have been in that form, and not by way of indictment. But, by the court—Disobeying an order of justices is an offence at common law; and, therefore, the prosecutor might proceed either way. The penalty given by the statute is only cumulative. It is a general rule, that subsequent statutes, which add cumulative penalties, do not repeal former statutes. (*R. v. Jackson*, 1 *Cowp.* 297.) If a statute makes that a felony which before was a misdemeanour only, the misde-

meanour is merged and cannot be prosecuted (*R. v. Cross*, 1 *Ld. Raym.* 711); or, if a later statute re-describes an offence under a former statute, giving a different punishment, varying the procedure, and giving an appeal, the prosecution must be under the later Act. (*Mitchell v. Brown*, *Ellis* 267.) Wherever there is a prohibitory law, if it be still in force, the proper remedy under it is by indictment; and, where a statute forbids the commission of any act, the doing it wilfully is indictable, although it be done without any corrupt motive. (*R. v. Jackson*, 1 *Cowp.* 297; *R. v. Holland*, 4 *T. R.* 457; *R. v. Holland*, 5 *T. R.* 607.)

Where a statute enabled the King in council to make certain orders relating to quarantine, a disobedience of these orders was holden to be a misdemeanour at common law, and indictable as such. (*R. v. Harris*, 4 *T. R.* 202.) So, where a corporation were authorized by a public statute to make a towing-path on the side of a river, it was holden to be a misdemeanour at common law to obstruct the corporation in the execution of the powers given them by the statute, and of course indictable. (*R. v. Smith*, 2 *Doug.* 441. See *Com. Dig. Indictment*, (D).)

By the 22 & 23 Vict. c. 17, s. 1, no indictment for perjury, conspiracy, obtaining money by false pretences, keeping a gaming house or disorderly house, or indecent assault, can be preferred without the authorization of a judge or of the attorney-general, unless the accused has been committed or detained in custody, or has been bound by recognizance to answer an indictment for such offence. But by the 30 & 31 Vict. c. 35, the above provision "shall not extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences mentioned in the said Act" (the 22 & 23 Vict. c. 17), "if such count or counts be founded (in the opinion of the court in or before which the same bill of indictment is preferred) upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace in the presence of the person accused or proposed to be accused by any such bill of indictment, and transmitted or delivered to such court in due course of law; and nothing in the said Act shall extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment, if such bill be presented to the grand jury with the consent of the court in or before which the same may be preferred."

### 3. Time of Indicting.

Offences against acts done under a statute.

Indictments for certain offences requiring the leave of a judge, &c.

## III. Time of Indicting.

By the 31 Eliz. c. 5, all indictments upon any statute *penal*, whereby the forfeiture is limited to the Queen, shall be sued within two years after the offence committed; if the forfeiture be limited to the Queen and prosecutor, the suit shall be in one year: and, in default thereof, the same shall be sued for the Queen within two years after that year ended. But, where a statute limits a shorter time, the suit shall be brought within such time limited.

On penal statutes.

But for indictment of felonies and other misdemeanours, where there is no forfeiture to the Queen, or to the Queen and prosecutor, no time is limited by any statute, though, in some cases, the several Acts of general pardon have the effect of a like limitation. The last of this kind was that of the 20 Geo. 2, c. 51, for certain offences committed before June 15, 1747. No length of time can legalize a public nuisance, although it may afford an answer to an action by a private individual. (*Weld v. Hornby*, 7 *East*, 199; *R. v. Cross*, 3 *Camp.* 227; *R. v. Smith*, 4 *Esp.* 109; *Peake*, *N. P.* 91.) Some offences, indeed, must, by particular statutes, be prosecuted within specified periods. (See "*Treason*," *Vol. V.*; "*Church*," *Vol. I.*; "*Game*," *Vol. II.*, etc.)

In general no limitation to indictments.

5. *Who may be joined as Defendants.*

As to the construction of such limitation clauses, see *R. v. Wilkie*, 1 *East*, P. C. 186; *Reg. v. Brookes*, 1 *Den. C. C.* 217; *Reg. v. Austin*, 1 *C. & K.* 621; *Reg. v. Hull*, 2 *F. & F.* 16; *R. v. Phillips*, *R. & R.* 369; *R. v. Killminster*, 7 *C. & P.* 228; *Tilladam v. Bristol (Inhab.)* 4 *N. & M.* 144.

#### IV. Against whom an Indictment lies.

Against whom it lies.

An indictment lies against all persons who actually commit, or who procure or assist in the commission of, crimes, or who knowingly harbour an offender; for each, in contemplation of law, is guilty, and liable to punishment according to the part which he takes in the perpetration of the offence. The capability of committing crimes, however, pre-supposes an act of understanding and an exercise of will; and, therefore, as no person can be excused from the penalties attaching upon the disobedience of the law, unless expressly designated and exempted by the law, the law has defined what persons and actions are privileged or exempted from the severity of the general punishment of penal laws, in respect of their incapacities or defects, whether natural, affected, accidental, or in respect of civil subjection. (*Arch. C. L.* 15th ed. 3.)

Corporation.

A corporation in its corporate capacity may be the object of an indictment. Thus a railroad company may be indicted for not constructing an arch in compliance with the provisions of the Act under which they are incorporated. (*R. v. Birming. & Glos. R. Co.* 2 *G. & D.* 236. See also *Reg. v. G. North of England R. Co.* 9 *Q.B.* 315; *E. C. R. Co. v. Broom*, 6 *Exch.* 314; *Whitfield v. S. E. R. Co.* *E. B. & E.* 115.)

Ignorance of law or fact.

Ignorance of the law will not excuse from the consequences of guilt any person who has a capacity to understand the law, of which all are presumed to have knowledge. (1 *Hale*, 42.) But this rule supposes an opportunity of knowing the law. Where, therefore, a defendant was indicted for maliciously shooting at A. B. upon the high seas, and the offence was perpetrated within a few weeks after the stat. 39 Geo. 3, c. 37, passed, and before notice of it could have reached the place where the offence was committed, the judges held, that he could not have been tried before that Act passed; and that, as he could not have heard of it, he ought to be pardoned. (*R. v. Bailey*, *R. & R.* 1.) If, however, a foreigner commit a crime in England, he cannot be excused because he does not know the law. (*R. v. Esop*, 7 *C. & P.* 456.) Ignorance or mistake of the fact, however, may in some cases be allowed as an excuse for the inadvertent commission of a crime; as, for instance, if a man, intending to kill a thief in his own house, kill one of his own family, he will be guilty of no offence. (1 *Hale*, 42, 43; 4 *Bl. Com.* 27; *R. v. Levett*, *Cro. Car.* 583.) But this rule proceeds upon a supposition that the original intention was lawful; for, if an unforeseen consequence ensue from an act which was in itself unlawful, and in its original nature wrong and mischievous, the actor is criminally responsible for whatever consequence may ensue. (4 *Bl. Com.* 27; *Arch. C. L.* 15th ed. 19.)

Accessaries, infants, lunatics, married women.

As to principals and accessaries, see "*Accessory*," Vol. I. As to when an infant may be indicted, see "*Children*," Vol. I.; when a lunatic or *non compos mentis* may, see *post*, "*Lunatic*;" when a married woman may, see *tit. "Wife*," Vol. V.

#### V. Who may be joined as Defendants in same Indictment.

Who may be joined as defendants.

Where the act is such that several may join in it, all the offenders may be included in the same indictment (2 *Hale*, 173; *R. v. Benfield*, 2 *Burr.* 984; 2 *Hawk. c.* 25, s. 89), or may be indicted separately.

Thus, where several keep a common gaming or other disorderly house, or are guilty of deer-stealing, maintenance, libelling, extortion, trespass, or other offences which admit of the agency of several, they may be either jointly or severally indicted. (2 *Hale*, 173—4; 2 *Hawk.* c. 25, s. 89; *R. v. Atkinson*, 1 *Salk.* 382; 1 *Chit. C. L.* 267.) So, if several commit a robbery, burglary, or murder, they may be so joined or separated. (2 *Hale*, 173.) And, though they have acted separately, yet, if the grievance is the result of the acts of all jointly, all may be indicted jointly for the offence. (*R. v. Trafford*, 1 *B. & Ad.* 874.) Where money has been obtained under false pretences, and the false pretences were conveyed by words spoken by one defendant in the presence of the others, all of whom acted in concert together, it was holden that they might all be indicted jointly. (*R. v. Young*, 3 *T. R.* 98.) So, where two persons joined in singing a libellous song, it was holden that they might be indicted jointly (*R. v. Benfield*, 2 *Burr.* 985); and the same, where two or more persons join in any other kind of publication of a libel. But, if the publication of each party be distinct, as if two booksellers, not being partners, sell the libel at their respective shops, they must be indicted separately. (*Arch. C. L.* 15th ed. 59.) Several offenders cannot be joined in an indictment for perjury, because the assignment must be of the very words spoken, and the words uttered by one cannot possibly be applied to those which proceed from another (*Young v. The King*, 3 *T. R.* 103-4; *R. v. Philips*, 2 *Str.* 921; 2 *Hawk.* c. 25, s. 89); or for seditious or blasphemous words or the like, because such offences are in their nature several.

Even where several commit a joint act, which act, however, is not of itself illegal, but becomes so merely by reason of some circumstances applicable to each individual severally and not jointly, they must be indicted separately; (2 *Hawk.* c. 25, s. 89); thus, several partners could not be indicted jointly for exercising their trade without having served an apprenticeship. (*R. v. Atkinson*, 1 *Salk.* 382; *R. v. Weston*, 2 *Str.* 628.) This is now no longer an offence.

Principals in the first and second degree, and accessaries before and after the fact, may all be joined in the same indictment (2 *Hale*, 173); or the principals may be indicted first, and the accessaries after the conviction of the principals. (See the 24 & 25 Vict. c. 94, ss. 2, 3, and see further as to principals and accessaries, tit. "*Accessory*," Vol. I.)

On an indictment against two, charging them with a joint and single offence, both or either may be found guilty; but they cannot be found guilty of the separate parts of the charge, subjecting the prisoners to distinct punishments. And, if they be found guilty separately, judgment cannot be passed upon one, unless a pardon be obtained, or a *nolle prosequi* be entered as to the other. (*R. v. Hempstead*, *R. & R.* 344.) It seems, however, that several receivers may be charged on the same indictment with separate and distinct acts of receiving. (*Reg. v. Pulham*, 9 *C. & P.* 281; *R. v. Hayes*, 2 *M. & Rob.* 156.) And see the 24 & 25 Vict. c. 96, s. 93, tit. "*Larceny*," post. By the 24 & 25 Vict. c. 96, s. 94, it is provided that, if, upon the trial of two or more persons indicted for jointly receiving any property, it should be proved that one or more of such persons separately received any part or parts of such property (and this has been held to apply also to the whole of such property; *Reg. v. Reardon*, 35 *L. J., M. C.* 171), "it shall be lawful for the jury to convict upon such indictment such of the said persons as shall be proved to have received any part or parts of such property." Where several persons are indicted for burglary and larceny, one may be found guilty of burglary and larceny, and the others of the larceny only. (*R. v. Butterworth*, *R. & R.* 520. See *R. v. Turner*, 1 *Sid.* 171.) On an indictment containing one count against *A & B* for larceny and another against *B* for receiving, a verdict of guilty against *B* was entered generally, the evidence showing that he was an accessory before the fact to the larceny and also a receiver of the property, and it was held, upon the 11 & 12 Vict. c. 46, s. 1, that

5. *Who may be joined as Defendants.*

Principal and accessory.

How far parties may be separately found guilty.

## 6. Joinder of Offences.

## Consequences of misjoinder.

the conviction was right. (*R. v. Hughes, Bell, C. C.* 242.) Several offenders may also, for different offences of the same kind, be in some cases included in the same indictment, the word "*separately*" being inserted, which makes it several as to each of them, though the Court will, in its discretion, quash the indictment, if any material inconvenience appear to rise from the mode in which it is preferred. (*Young v. The King*, 3 *T. R.* 106; *R. v. Kingston*, 8 *East*, 46.) In cases of conspiracy and riot, where one cannot be indicted for an offence committed by himself alone, the acquittal of so many as shall render it impossible for the rest to have committed the offence must of course extend to him. (*R. v. Kinnersley*, 1 *Str.* 193; *R. v. Sudbury*, 12 *Mod.* 262; 2 *Salk.* 593; 13 *East*, 412; 1 *Ld. Raym.* 484, *S. C.*)

Misjoinder of defendants may be made the subject of a demurrer, motion in arrest of judgment, or writ of error; or the Court will, in general, quash the indictment. (*Young v. The King*, 3 *T. R.* 103-6; *R. v. Clarke*, 1 *East*, 46; 2 *Camp.* 132.) If, however, two be improperly found guilty separately on a joint indictment, the objection may, as we have just seen, be cured by producing or entering a *nolle prosequi* as to the one of them who stands second on the verdict.

Where two persons are indicted for a conspiracy, and one of them dies before the trial, and it proceeds against both, it is no mistrial, and entry of a suggestion of the death on the record is unnecessary. (*Reg. v. Kenrick*, 12 *L. J. (N. S.)*, *M. C.* 135.)

Death of one defendant.

## VI. How many, and what Offences may be joined in same Indictment.

## In high treason.

In an indictment for high treason, there may be different counts, each charging the defendant with different species of treason against the Queen and her government, such as compassing the Queen's death, levying war, adhering to the Queen's enemies, within the 25 *Edw.* 3, st. 5, c. 2, and the conspiracies to levy war, within the 36 *Geo.* 3, c. 7, s. 1; but counts for treasons against the Queen and her government, and treasons relating to other matters where the judgments are different, cannot be joined. (*Arch. C. L.* 15th ed. 60.)

In point of law several offences which may be tried by the same rules and which have the same legal character, *i. e.* several felonies or several misdemeanours, may be charged in one indictment. (2 *Hale*, 173; See *Reg. v. Heywood, L. & C.* 457; 33 *L. J. M. C.* 133.)

## In felonies.

But in *felonies* the established rule of practice is that no more than one distinct offence or criminal transaction at one time should regularly be charged upon the prisoner in one indictment, because, if that should be shewn to the Court before plea, they will quash the indictment, lest it should confound the prisoner in his defence, or prejudice him in his challenge to the jury; for he might object to a jurymen's trying one of the charges, though he might have no reason so to do in the other; and, if they do not discover it until afterwards, they may compel the prosecutor to elect on which charge he will proceed. (*R. v. Young*, 3 *T. R.* 105-6; 2 *East's P. C.* 515; *R. v. Jones*, 2 *Camp.* 131; *R. v. Johnson*, 3 *M. & S.* 539.) But it is no objection in arrest of judgment. (*Reg. v. Hinley*, 2 *M. & Rob.* 524.) Nor is it ground of demurrer. (3 *T. R.* 98; 1 *Chit. C. L.* 253.)

Thus, upon an indictment for receiving stolen goods, if it appear that the articles were received at different times, the prosecutor must elect as to the receipt of which articles he will prosecute; but the mere probability that the goods were stolen or received at different times is no ground for putting the prosecutor to his election. (*R. v. Dunn et al.*, 1 *Mood. C. C.* 146.) But see now the 24 & 25 *Vict. c.* 96, ss. 5, 6, *post*, tit. "*Larceny*." These sections only apply to takings, and there do not appear

to be any similar provisions with respect to "receiving of stolen goods." It seems, however, from Heywood's case, *supra*, that, where there are three acts of larceny in separate counts, there may also be three counts for receiving. Where several articles are mentioned in the indictment, the prosecutor must prove that they were all taken at the same time, or at not more than three times, and that not more than six months elapsed between the first and last taking; otherwise he will be put to his election to proceed for such number of taking, not exceeding three, as have taken place within the period of six months (24 & 25 Vict. c. 96, ss. 5, 6, post, tit. "*Larceny*"). So, upon an indictment for robbery, and for an assault with intent, etc., in different counts, the prosecutor must elect upon which he will proceed. (*R. v. Gough*, 2 M. & R. 71; *R. v. Smith*, 3 C. & P. 412.) But there is now no occasion for adding a count for an assault with intent; for the jury may find the prisoner guilty of such an assault upon an indictment for robbery only. (See the 24 & 25 Vict. c. 96, s. 41.) An indictment has been held to be good in point of law, which charged the prisoners as principals in one count, and as receivers in another (*R. v. Galloway*, 2 Moo. C. C. 234); and now, by the 24 & 25 Vict. c. 96, s. 92, it is provided that such a course may be pursued, and the prosecutor is not to be put to his election. Where an indictment contained a count for embezzlement, and another for larceny as a bailee, and the Court compelled the counsel for the prosecution to elect, and he elected to proceed for the larceny, and on that count the prisoner was convicted, it was held that the conviction was right. (*Reg. v. Holman*, L. & C. 177.) In indictments for embezzlement the prosecutor may charge any number of distinct acts of embezzlement, not exceeding three, committed by the prisoner against the same master within the space of six months. (24 & 25 Vict. c. 96, s. 71.)

In a case of arson the indictment contained five counts each charging a firing of a house of a different owner; but, it being opened that the five houses were in a row and the same fire burnt them all, the judge would not put the prosecutor to elect, it being all one transaction. (*Reg. v. Trueman*, 8 C. & P. 727; and see *Reg. v. Davis*, 3 F. & F. 19.) And as a general rule, where the two offences charged form parts of one transaction, yet are of such a nature that the defendant may be found guilty of both, the prosecutor will not be called upon to elect upon which charge he will proceed; for in such a case the joinder of counts cannot prejudice the defendant, which is the only ground on which this application to the discretion of the judge to make the prosecutor elect can be founded. (*R. v. Austin*, 7 C. & P. 796; *R. v. Hartall*, *id.* 475; *R. v. Wheeler*, *id.* 170; *Reg. v. Pulham*, 9 C. & P. 281.) Thus a prosecutor will not be compelled to elect, where a count charging a person with being accessory before the fact is joined with one charging him with being accessory after. (*R. v. Blackson*, 8 C. & P. 43.) So he may be indicted as a principal in the first degree in one count, and as a principal in the second degree in another count. (*R. v. Gray*, 7 C. & P. 174.) And, where there are counts in an indictment for forging a bill, acceptance, and indorsement, the prosecutor is not driven to elect on which he will proceed. (*R. v. Young*, *Peake's Add. Cas.* 228.) Although a prosecutor cannot thus charge a defendant with different felonies in different counts, yet he may charge the same felony in different ways in several counts, in order to meet the facts of the case; as, for instance, if there be a doubt whether the goods stolen, or the house in which a burglary or larceny was committed, be the goods or house of A. or of B., they may be stated in one count as the goods or house of A., and in another as the goods or house of B. (*R. v. Eggington*, 2 B. & P. 508.) The 7 & 8 Geo. 4, c. 28, s. 6, which abolishes the benefit of clergy in cases of felony, provides that nothing therein contained shall prevent the joinder in any indictment of any counts which might have been joined before the passing of that Act.

In *misdeemeanours*, the joinder of several offences will not, in general,

7. *General Requisites.*

vitiate the prosecution in any stage. (*Young v. The King*, 3 T. R. 105; *R. v. Jones*, 2 Camp. 132; *R. v. Saunders*, 2 Burr. 984; *R. v. Kingston*, 8 East, 41.) For, in offences inferior to felony, the practice of quashing the indictment or calling upon the prosecutor to elect on which charge he will proceed does not exist. (*R. v. Jones*, 2 Camp. 132.) On the contrary, it is the constant practice to receive evidence of several libels and assaults upon the same indictment. (*Id.* & *R. v. Benfield*, 3 Burr. 984.) And see *R. v. Levy* (2 Stark. C. N. P. 458), where, under several counts for a conspiracy, alleging several conspiracies of the same kind on the same day, the prosecutor was allowed to give in evidence several conspiracies on different days. See also *R. v. Broughton* (*Trem. P. C.* 111), where the indictment charged twenty distinct acts of extortion. But, where two defendants were indicted for a conspiracy and for a libel, and at the close of the case for the prosecution there was evidence against both as to the conspiracy, but no evidence against one of them as to the libel, the judge observed that it was more fair that the prosecutor should elect which charge he would go upon, and it was done accordingly. (*Reg. v. Murphy*, 8 Car. & P. 276.)

Consequence of misjoinder.

If the legal judgment on each count would be materially different, as in felony and misdemeanour, then the joinder of such several counts would be bad on demurrer, in arrest of judgment, or on error. (*Young v. The King*, 3 T. R. 103; *Hancock v. Haywood*, *Id.* 435. But see 1 *East's P. C.* 408; 1 *Chit. C. L.* 254-5.) But the objection may be cured at the trial, by taking a verdict on the counts only that can be joined. (*Reg. v. Jones*, 8 C. & P. 776.)

How cured by verdict.

A prosecutor cannot maintain two indictments for misdemeanour for the same transaction; he must elect to proceed with one and abandon the other. (*R. v. Britton*, 1 M. & R. 297.)

In some cases it is unnecessary to add counts.

Where a prisoner is indicted for felony or misdemeanour, it is not necessary to add counts for an attempt to commit such felony or misdemeanour. (See the 14 & 15 Vict. c. 100, s. 9.) And so of robbery, and assault with intent to commit such robbery. (See the 24 & 25 Vict. c. 96, s. 41.) So on an indictment for embezzlement, if the offence turn out to be larceny, the prisoner may be found guilty of larceny as a servant, and *vice versâ*. (See the 24 & 25 Vict. c. 96, s. 72.) So, if, upon an indictment for obtaining goods by false pretences, the offence turn out to be larceny, the defendant may be convicted of the false pretences. (See the 24 & 25 Vict. c. 96, s. 88.) But the facts proved must correspond with the false pretences laid in the indictment. (*Reg. v. Bulmer, L. & C.* 482. 33 L. J. M. C. 171.) So, upon an indictment for any misdemeanour, if the facts given in evidence amount to a felony, the defendant shall not on that account be acquitted of the misdemeanour, unless the Court think fit to discharge the jury, and order the defendant to be indicted for the felony (See the 14 & 15 Vict. c. 100, s. 12); but the evidence must prove the act charged and not some other and different act. So, on an indictment for a misdemeanour in having carnal knowledge of a girl between ten and twelve years of age, the defendant could not be convicted of the felony of having carnal knowledge of a girl under ten, though in fact the girl was proved to be of that age. (*Reg. v. Shott*, 3 C. & K. 206.)

## VII. General Requisites.

And herein—

1. *Of the requisite Certainty in, and what must be stated, and how,* p. 10.
2. *Of the Consequences of the want of such Requisites,* p. 15.

### 1. CERTAINTY IN, AND WHAT MUST BE STATED, AND HOW.

Indictments should be framed with sufficient certainty. For this pur-

General requisites.

Certainty, necessary.

pose the charge must contain a certain description of the crime of which the defendant is accused, and a statement of the facts by which it is constituted, so as to identify the accusation, lest the grand jury should find a bill for one offence, and the defendant be put upon his trial in chief for another, without any authority. These precautions are also necessary, in order that the defendant may know what crime he is called upon to answer, and may be enabled to claim any right or indulgence incident to the prosecution of some crimes, as treason, etc., as well as that the jury may appear to be warranted in their conclusion of "guilty" or "not guilty" upon the premises to be delivered to them; and that the Court may see such a definite offence on record, that they may apply the judgment, and the punishment, which the law prescribes. They are also important, in order that the defendant's conviction or acquittal may insure his subsequent protection, should he again be questioned on the same ground, and that he may be enabled to plead his previous conviction or acquittal of the same offence in bar of any subsequent proceedings. (*R. v. Horne*, *Cowp.* 682-3; *R. v. Holland*, 5 *T. R.* 611, 623; 1 *Leach*, 249; *R. v. Mason*, 2 *T. R.* 586; *R. v. Perrott*, 2 *M. & Sel.* 386.)

### 7. General Requisites.

If any fact or circumstance which is a necessary ingredient in the offence be omitted in the indictment, such omission vitiates the indictment, and the defendant may avail himself of it by demurrer, motion in arrest of judgment, or writ of error. Thus, an indictment for assaulting an officer in the execution of process, without showing that he was an officer of the Court out of which the process issued (*R. v. Osmer*, 5 *East*, 304; see *R. v. Everett*, 2 *Man. & R.* 35; *S. C.* 8 *B. & C.* 114); for contemptuous or disrespectful words to a magistrate, without showing that the magistrate was in the execution of his duty at the time (*R. v. Lease*, *Andr.* 226); against a public officer for non-performance of a duty, without showing that he was such an officer as was bound by law to perform that particular duty (5 *T. R.* 623); or stating that the prisoner feloniously did lead away a horse, etc., without saying "take" (2 *Hale*, 184); or for obtaining money by false pretences without showing whose money it was. (*R. v. Norton*, 8 *C. & P.* 196; *R. v. Martin*, 8 *Ad. & Ell.* 481.) In all these and the like cases, the indictment is bad, and the defect may be taken advantage of in the manner above mentioned. (See *R. v. Cheere*, 7 *D. & R.* 461; 4 *B. & C.* 902; 1 *B. & Adol.* 861; *R. v. Long*, 5 *Co.* 122 *b*.)

Consequences of want of.

Every fact and circumstance laid in an indictment, which is not a necessary ingredient in the offence, may be rejected as surplusage, and need not be proved at the trial (see the 7 *Geo.* 4, c. 64, s. 20; *R. v. Jones*, 2 *B. & Ad.* 611); also, if there be any defect in the manner of stating such matter, the defect will not vitiate the indictment. (*R. v. Walker*, 4 *Co.* 41 *a*; *R. v. Long*, 5 *Co.* 121 *b*; *R. v. Holt*, 2 *Leach*, 593. And see *R. v. Howarth*, 3 *Stark.* 26.) And by the 14 & 15 *Vict.* c. 100, s. 24, no indictment shall be deemed insufficient for want of the averment of any matter unnecessary to be proved.

Surplusage.

With respect to the *degree* of certainty, the indictment must state the facts of the crime with as much certainty as the nature of the case will admit. Therefore, an indictment charging the defendant with obtaining money by false pretences, without stating what were the particular pretences, is insufficient. (*R. v. Mason*, 2 *T. R.* 581. And see further instances, 1 *Chit. C. L.* 171, 229.) If, indeed, it were for a conspiracy to obtain money by false pretences, it would be otherwise. (2 *B. & Adl.* 204.)

Degree of certainty.

An indictment that the defendant is a common highwayman, a common defamer, a common disturber of the peace, and the like, is not good; because it is too general, and contains not the particular matter wherein the offence was committed. (2 *Hale*, 182.)

Charge must not be too general.



### 7. General Requisites.

It must be special.

In like manner, an indictment for divers scandalous, threatening, and contemptuous words spoken of a justice of the peace, is not good; it ought to set forth the words in special. (*R. v. How*, 2 *Str.* 699.) But in certain excepted cases, it is sufficient to state, generally, that the defendant is so-and-so, without specifying any particular instances; as in a charge of being a common scold, a common barrator, or of keeping a common bawdy-house. (2 *Hawk. c.* 25, ss. 57, 59. And see further, 1 *Chit. C. L.* 229, 230.)

Certainty to every intent.

The indictment ought to be certain to every intent, and without any intendment to the contrary. (*Cro. Eliz.* 490.) And it ought to have the same certainty as a declaration (*Comb.* 460); for all the rules that apply to civil pleadings are applicable to criminal accusations. (*R. v. Lawley*, 2 *Str.* 904.) An indictment which may apply to either of two different definite offences, and does not specify which, is bad. (*R. v. Marshall*, 1 *Moo. C. C.* 158.) Mere matter of inducement, however, does not require so much certainty in its statement as the gist of the offence. (*R. v. Wright*, 1 *Vent.* 170; *Com. Dig. Indictment* (G. 5).) So, where the offence cannot be stated with complete certainty, it is sufficient to state it with such certainty as it is capable of. As, in the case of a conspiracy to defraud a person of goods, it is not necessary to describe the goods as in an indictment for stealing them; stating them as "divers goods" has been holden sufficient. (*R. v. Gill*, 1 *Chit.* 698; 2 *B. & Ald.* 204, *S. C.* See *Reg. v. Kenrick*, 5 *Q. B.* 49.)

Charge must be explicit,

The charge must be sufficiently explicit to support itself; for no latitude of intention can be allowed to include any thing more than is expressed. (*R. v. Wheatley*, 2 *Burr.* 1127; *R. v. Perrott*, 2 *M. & Sel.* 381; *R. v. Stevens*, 5 *B. & C.* 246; *S. C. nom. R. v. Richards*, 7 *D. & R.* 665.)

and not repugnant.

Repugnancy in a material matter will be fatal to the indictment. (5 *East*, 254-5.) As, for instance, an indictment charging the defendant with forging a bond by which J. S. was bound, etc. (which is impossible, if the writing be forged): or with disseising A., and it appears upon the face of the indictment that A. had but an estate for years (2 *Hawk. c.* 25, s. 62); or the like. But, though the indictment must in all respects be certain, yet the introduction of averments altogether superfluous and immaterial will seldom prejudice; for, if the indictment can be supported without the words which are bad, they may, on arrest of judgment, be rejected as surplusage. (1 *Leach*, 474; *R. v. Hall*, 1 *T. R.* 322; *Com. Dig. Pleader* (C. 28); *Heydon's case*, 4 *Co.* 41 a; *Long's case*, 5 *Co.* 121 b; 2 *Hawk. c.* 25, s. 55; *R. v. Benfield*, 2 *Burr.* 985; 1 *Chit. C. L.* 231.) An indictment charged A. in one count with stealing, and in another with receiving the goods "so as aforesaid feloniously stolen," and it was held, after verdict, that these words did not necessarily import a stealing by A.; and, if they did, it was conceivable that A. might have both stolen and received the goods, and that, therefore, there was no repugnancy. (*R. v. Craddock*, 2 *Den. C. C.* 31.)

Must be positive, and not by way of recital,

The offence must be positively charged, and not stated by way of recital; so that the words "that whereas" prefixed will render it invalid. (*R. v. Hamworth*, 2 *Str.* 900, n. (1); *R. v. Crowhurst*, 2 *Ld. Raym.* 1363; *Sess. Ca.* 159, 415, 416; *Cro. C. C.* 41; 1 *Chit. C. L.* 230.) But in an indictment on a conviction, it is not necessary to set forth the conviction at large, but only shortly, that such a one was before such and such justices convicted, according to the form of the statute, and thereupon a warrant was issued, etc. (*Reg. v. Wyatt*, 2 *Ld. Raym.* 1196); and mere matter of inducement may be stated sometimes by way of recital. (*Reg. v. Goddard*, 2 *Ld. Raym.* 920; 3 *Salk.* 171, *S. C.*)

or in the disjunctive,

The offence must not be laid disjunctively, as that defendant "murdered or caused to be murdered." (2 *Hawk. c.* 25, s. 58; 1 *Chit. C. L.* 231.)

The charge must not be stated *argumentatively*, or by way of *inference*, but must be alleged in express and positive language. (1 *Salk.* 373.)

7. *General Requisites.*

or argumentatively.

Duplicity.

The indictment must not be *double*. The defendant must not be charged with having committed two or more offences in any one count of the indictment; for instance, one count cannot charge the defendant with having committed a murder and a robbery, or the like. So, two defendants cannot be jointly charged with murder or manslaughter by means of an injury done by one of them to the deceased on one day, and another injury done by the other of them on a different day. (*Reg. v. Devett*, 8 *C. & P.* 639.) The only exception to this rule is to be found in indictments for burglary, in which it is usual to charge the defendant with having broken and entered the house with intent to commit a felony, and also with having committed the felony intended. And in indictments for embezzlement the prosecutor may charge any number of distinct acts, not exceeding three, committed against the same master within six months. See the 24 & 25 *Vict. c. 96*, s. 71. So also in cases of larceny, see the 24 and 25 *Vict. c. 96*, s. 5. The proper course seems to be to charge the several acts in several counts. (*Reg. v. Purchase*, *C. & M.* 617.) Laying several overt acts in a count for high-treason is not duplicity (*Kelyng*, 8), because the charge consists of the compassing, etc., and the overt acts are merely evidences of it; and the same as to conspiracy. That the defendant published and caused to be published a libel is not double, for they are the same offence. So, a count in an indictment charging a man with one endeavour to procure the commission of two offences is not bad for duplicity, because the endeavour is the offence charged. (*R. v. Fuller*, 1 *B. & P.* 181.) And it is now generally understood, that a man may be indicted for the battery of two or more persons in the same count, without rendering the count bad for duplicity. (*R. v. Benfield*, 2 *Burr.* 984. See 2 *Str.* 870; *R. v. Clendon*, 2 *Ld. Raym.* 1572, *cont.* 2 *Sess. Cas.* 24, No. 28, *S. C.*) In felonies, also, the indictment may charge the defendant, in the same count, with felonious acts with respect to several persons,—as in robbery, with having assaulted A. & B., and stolen from A. one shilling, and from B. two shillings,—if it was all one transaction. (*Reg. v. Giddins*, *C. & M.* 634.)

We have already seen what, and how many, offences may be charged in the same indictment, *ante*, p. 8.

*Presumptions of law* need not be stated. (See 4 *M. & Sel.* 105; 2 *Wils.* 147. And see 1 *Chit. on Pl.*, 7th edit., 243.) Neither need *facts of which the Court will, ex officio, take notice*. (See on this subject 1 *Chit. on Pl.*, 7th edit., 236; and *R. v. Chard*, *R. & R.* 488.)

Presumptions of law.

Facts taken notice of by the Courts.

*Conclusions of law*, resulting from the facts of the case, need not be stated; it suffices to state the facts, and leave the Court to draw the inference. (2 *Leach*, 941; *R. v. Smith*, 2 *B. & P.* 127; 2 *Leach*, 942, 4th edit., 858; *R. & R.* 5, *S. C.*; 1 *East*, *P. C.* 183. And see *R. v. Booth*, *R. & R.* 7; *R. v. Michael*, 2 *Leach's C. C.*, 4th edit., 938; *R. & R.* 29, *S. C.*)

Conclusions of law.

*Mere matter of evidence*, which the prosecutor proposes to adduce, need not be stated, unless it alters the offence; for, if so, it would make the indictment as long as the evidence. (*R. v. Turner*, 1 *Str.* 139, 140; *Fost.* 194.) And, upon this principle, it has been held, that an indictment charging the defendants with conspiring, “by divers false pretences, and undue means and devices, to obtain money of A. B., and to cheat and defraud him thereof,” is sufficient, without setting forth the particular means or pretences. (*R. v. Gill*, 2 *B. & Ald.* 204; 1 *Chit. R.* 698 *S. C.*; *R. v. Mawbey*, 6 *T. R.* 628; 1 *Leach's C. L.* 274.)

Mere matters of evidence.

All *matters of defence* must come from the defendant, and need not be anticipated or stated by the prosecutor. (*R. v. Baxter*, 5 *T. R.* 84;

Matters of defence.

### 7. General Requisites.

2 *Leach*, 580.) In an indictment for disobedience of a justice's order, it need not be averred that the order was not revoked; nor is it necessary to negative the commission of a higher offence. (*R. v. Higgins*, 2 *East*, 19, 20.) And it is never necessary to negative all the exceptions which by some other statute than that which creates the offence might render it legal; for these must be shown by defendant for his own justification. (*R. v. Pemberton*, 2 *Burr.* 1036; 1 *Bl. Rep.* 230, *S. C.*; 2 *Leach*, 580.)

#### Facts in defendant's own knowledge.

*Facts which lie more peculiarly within the defendant's than the prosecutor's knowledge* need not be shown with more than a certainty to a common intent. Thus, where a public officer is charged with a breach of duty in certain acts within the limits of his office, it is not necessary to state they were within his knowledge; for this will be inferred from the nature of the trust reposed in him. (*R. v. Holland*, 5 *T. R.* 607.)

#### Notice.

If *notice* be necessary to raise the duty which the defendant is alleged to have broken, it should be averred; but, where knowledge must be presumed, and the event lies alike in the knowledge of all men, it is never necessary either to state or prove it. (*R. v. Holland*, 5 *T. R.* 621.)

#### Request.

If a *request* or *demand* be necessary to complete the offence, it must be stated; thus, in an indictment for disobeying a justice's order, it is necessary to state that the defendant was requested to perform the order, or, at all events, that it was served on him. (*R. v. Kingston*, 8 *East*, 52, 53; *R. v. Fearnley*, 1 *T. R.* 316; *Cald.* 554.)

#### Evil intent.

Where an *evil intent* accompanying an act is necessary to constitute such act a crime, the intent must be alleged in the indictment, and proved. Thus, where a libel has not been published, but merely sent to the prosecutor, it is necessary to state in the indictment that it was sent to him with an intention to provoke him to a breach of the peace; so, where a letter containing a libel is sent to the wife, the indictment ought to allege it was sent with intent to disturb the domestic harmony of the parties. (*R. v. Wegener*, 2 *Stark. C. N. P.* 245. And see *R. v. Duffin*, *R. & R.* 365; *R. v. Furnival*, *Id.* 445.) It is not necessary to prove the whole intention as stated in the indictment; if it be divisible, it will suffice to prove that part of it necessary to constitute the offence; and, on an indictment charging an assault with intent to abuse and carnally know, the defendant may be convicted of an assault with an attempt to abuse simply. (3 *Stark.* 62, 35.) And see further as to the divisibility of averments, title "*Evidence*," Vol. II.

#### Statutes.

As to statement of offences against statutes, see *post*, p. 29.

#### Unnecessary matter.

*Unnecessary Matter*.]—As observed by Mr. Justice Buller, it is the duty of a good pleader not to clog the record with unnecessary matter, and thereby throw a greater burden of proof on his client than the law requires; and it is still more his duty not to state things which, on the face of the indictment, are repugnant, inconsistent, or absurd (2 *Leach*, 660); and the statement of unnecessary matter is censurable and dangerous. And, because the jury are sworn to present the truth, it is best to lay all the facts in the indictment as near to the truth as may be; and not to say, in an indictment for a small assault (for instance), wherein the person assaulted received little or no bodily hurt, that such a one *with swords, staves, and pistols, beat, bruised, and wounded him, so that his life is greatly despaired of*; nor to say, in an indictment of a highway being obstructed, that the King's subjects cannot go thereon, *without manifest danger of their lives*; and the like. Which kind of words, as they are not at all necessary, so they may stagger an honest man upon his oath to find the fact as so laid. Where an indictment is vexatiously long, the Court will refer it to the Master, and sometimes make the clerk of the peace pay the costs of the unnecessary matter. (1 *Chit. C. L.* 293.) Novel attempts in pleading are not encouraged. (See *R. v. Stevens*, 5 *B & C.* 246; *S. C. nom. R. v. Richards*, 7 *D & R.* 665.)

## 2. CONSEQUENCES OF WANT OF GENERAL REQUISITES.

8. *Particular Requisites and Parts.*

If any fact or circumstance which is a necessary ingredient in the offence be omitted, or stated without sufficient certainty, in the indictment, such omission or imperfect statement vitiates the indictment, and the defendant may avail himself of it by demurrer, motion in arrest of judgment, or writ of error. (*R. v. Osmer*, 5 *East*, 304; *Andr.* 226; *Long's case*, 5 *Co.* 122 *b*; 2 *Hale*, 184; *R. v. Mason*, 2 *T. R.* 581.)

2. Consequences of want of general requisites in indictments.

Every fact and circumstance laid in an indictment which is not a necessary ingredient in the offence may be rejected as surplusage, and need not be proved at the trial; also, if there be any defect in the manner of stating such matter, the defect will not vitiate the indictment. (*Walker's case*, 4 *Co.* 41 *a*; *Long's case*, 5 *Co.* 121 *b*. And see *R. v. Howarth*, 3 *Stark.* 26.) And by the 14 & 15 Vict. c. 100, s. 29, it is enacted that no indictment shall be deemed insufficient for want of the averment of any matter unnecessary to be proved.

Unnecessary averment.

But, in every case, where an offence is stated in an indictment with greater particularity than is necessary, the unnecessary allegations, if descriptive of some ingredient in the offence, and not merely of circumstances of aggravation, are material and relevant, and cannot be rejected as surplusage. (*R. v. Dowlin*, 5 *T. R.* 311, 317; *Arch. C. L.*, 15th ed., p. 47.)

Duplicity is, it should seem, cured by pleading over. (*Nash v. the Queen*, 33 *L. J. M. C.* 94.) Duplicity.

On a Crown case reserved, the judges will not allow the prisoner's counsel to argue objections that are apparent on the face of the indictment, unless they were reserved by the judge, but will leave the prisoner to his writ of error. (*Reg. v. Overton*, 1 *Car.* 2 *M.* 655.)

VIII. *Particular Requisites and Parts.*

And herein of—

Division of subject.

1. *The Caption*, p. 15.
2. *The Venue*, p. 17.
3. *The Name and Addition of the Defendant*, p. 22.
4. *The Name and Description of Prosecutor and Third Persons*, p. 23.
5. *The Statement of Time*, p. 28.
6. ———— *of Place*, p. 29.
7. ———— *of the Offence itself*, p. 29.
8. ———— *of Statutes, and Offences thereon*, p. 29.
9. ———— *of Written Instruments*, p. 31.
10. ———— *of Chattels, Number, and Value*, p. 32.
11. ———— *of Technical Words*, p. 33.
12. *The Conclusion at Common Law*, p. 34.
13. ———— *on Statutes*, p. 35.

## 1. THE CAPTION.

The caption of the indictment is indeed no part of the indictment itself (2 *Hale*, 166), but is the style or preamble, or return that is made from an inferior court to a superior, from whence a certiorari issues to remove it; or, it is the style or preamble, when the whole record is made

1. The caption.

8. *Particular Requisites and Parts.*

Commencement.

up in form; for the record of the indictment, as it stands upon the file in the court where it is taken, is only thus—"The jurors for our lady the Queen upon their oath present." If one of the grand jurors be a quaker or other person entitled to affirm instead of taking an oath, the indictment ought to commence—"The jurors for our lady the Queen upon their oath and affirmation present," etc. (9 C. & P. 78.) An indictment commencing "The jurors of our lady the Queen," is not bad in arrest of judgment. The words "of our lady the Queen" may be rejected as surplusage, the jurors intended being those mentioned in the caption. (*R. v. Turner*, 2 M. & Rob. 214; *Broome v. Reg.* 12 Q. B. 834.)

The following is the form of the caption:—

Caption.

"Westmoreland.—At the general quarter sessions of the peace holden at Appleby, in and for the county aforesaid, the — day of —, in the — year of the reign of our sovereign lady Victoria, of the united kingdom of Great Britain and Ireland Queen, defender of the faith, before J. P. and K. P., esquires, and others their associates, justices of our said lady the Queen, assigned to keep the peace of our said lady the Queen in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, by the oath of — good and lawful men of the county aforesaid, sworn and charged to inquire for our said lady the Queen, and for the body of the county aforesaid, it is presented, That John Armstrong," etc. (So continuing the indictment).

The sessions, etc.

[At the General Quarter Sessions of the Peace.]—The Court where the indictment is made must be expressed; otherwise the caption is erroneous. (1 *Hale*, 166; 2 *Hawk.* c. 25, s. 118.)

[Holden at Appleby, in and for the County aforesaid.]—It must appear where the sessions were held, and that the place where they were held is within the extent of the commission. (2 *Hale*, 166.) Where the caption of the indictment stated the Court of Quarter Sessions, where such indictment was found, to have been holden on an impossible day, it was held to be fatal. (*R. v. Fearnley*, 1 T. R. 316.)

[The — Day of —, in the — Year of the Reign of our Sovereign Lady Victoria.]—It hath been adjudged that, if the caption of the indictment describe the sessions holden in the time past, and not in the time present, or as holden on such a day in such a year of the Queen, without ascertaining what queen, it is insufficient. But it seems to be agreed, that it is sufficient to express the year of the Queen, without adding that of our Lord. (2 *Hawk.* c. 25, s. 127.)

[The — Day.]—Figures to express numbers are not allowable in an indictment; but numbers, whether cardinal or ordinal, must be expressed in words (2 *Hale*, 170), or, at least, in Roman numerals. (*R. v. Phillips*, 1 *Stra.* 261.)

[Before J. P. and K. P., Esquires, and others their Associates.]—It is not necessary to name all the justices, but only so many as are enabled to hold a sessions, and the rest may be supplied by the words *and others, their associates*. (2 *Hale*, 167.) And, although no sessions can be holden without one of the justices being of the *quorum*, yet in the caption there need not be any mention which of them, or whether any of them, are of the *quorum*; for it is sufficient if, *de facto*, the sessions be holden before him or them that are of the *quorum*, although not so mentioned; and so is the usual course. (2 *Hale*, 167.)

[And also to hear and determine, etc.]—These words are necessary, because, without this clause (by the commission), they cannot proceed by indictment. (2 *Hale*, 166; *R. v. Carter*, 1 *Stra.* 442.)

[By the Oath.]—If the caption conclude that *it is presented*, without saying *on their oath*, it shall be quashed; for their presentment must be upon oath, and so returned. (2 *Hale*, 168.)

[By the Oath of —.]—It must name the jurors that presented the of-

fence; and, therefore, "by the oath of A. B., C. D., and others," is not good; for it may be the presentment was by a less number than twelve, or that some one of them was incapacitated, who might influence all the rest; as, for instance, a person outlawed, in which case the indictment may be quashed by plea. (2 *Hale*, 167; *R. v. Davis*, 1 *C. & P.* 470.) But it is no ground of error that the copy of the caption on the record does not contain the names of the persons on whose oath the indictment was found. (*R. v. Aylett*, 6 *Ad. & El.* 247, n. See also, *R. v. Marsh*, 6 *Ad. & El.* 236.)

*Good and lawful Men of the County aforesaid.*]—These words also, Lord *Hale* saith, are necessary. But Mr. *Hawkins* says, that it is no exception to an indictment found in the superior Courts, and that it hath been overruled; because all men shall be intended to be honest and lawful till the contrary appear. (2 *Hale*, 167; 2 *Hawk.* c. 25, s. 17.)

*Sworn and charged to inquire for our said Lady the Queen, and for the Body of the County aforesaid.*]—Though Lord *Hale* says it seems requisite to add this clause (2 *Hale*, 167), it is holden, in *R. v. Morgan* (1 *Ld. Raym.* 710), that it is not necessary.

See further as to the caption of the indictment, 1 *Chit. C. L.* 326, to 336.

A mistake in the caption may, in general, be amended. (See *Id.* 335, and *R. v. Justices of Middlesex*, 5 *B. & Ad.* 1113; *R. v. Marsh*, 6 *A. & E.* 236.)

8. *Particular Requisites and Parts.*

## 2. THE VENUE.

And herein—

The venue.

- (a) *Where it is to be laid*, p. 17.
- (b) *When a defective Venue is cured*, p. 21.
- (c) *The mode of stating it*, p. 21.
- (d) *The Consequences of a defective Statement or Omission of Venue*, p. 22.

### (a) *Where to be laid.*

*At Common Law.*]—At common law, the venue should always be laid in the county where the offence is committed, although the charge is in its nature transitory. (*Co. Litt.* 125. a.; 2 *Hawk.* c. 25, s. 35.) And it does not lie on the prisoner to disprove the commission of the offence in the county in which it is laid; but it is an essential ingredient in the evidence on the part of the prosecutor to prove that it was committed within it. (*R. v. Crocker*, 2 *New Rep.* 92; 2 *Leach*, 634; 2 *East's P. C.* 605.) The venue was always regarded as a matter of substance; and, therefore, at common law, when the offence was commenced in one county and consummated in another, the venue could be laid in neither, and the offender went altogether unpunished. (1 *Hale*, 651, 652; 2 *Hawk.* c. 25, s. 36; *Bac. Ab. Indictment* (F.) And see the preamble of the 2 & 3 *Edw. 3*, c. 24; 1 *Chit. C. L.* 177.)

Where to be laid.

At common law.

*By Statute.*]—The inconveniences arising from the strictness of the common-law principle respecting the locality of offences have been, however, in a great degree, remedied by several statutory enactments. Most of those statutes will be found, and will be more aptly considered, under the various titles of offences throughout this work.

By statute.

*Offences committed near the Boundaries of Counties, or partly in one County and partly in another.*]—The 7 *Geo. 4*, c. 64, s. 12, enacts "that, where any felony or misdemeanour shall be committed on the boundary or boundaries of two or more counties, or within the distance of five hundred yards of any such boundary or boundaries, or shall be begun in one county and completed in another, every such felony or misdemeanour

Offences committed on the borders of counties,

8. *Particular  
Requisites  
and Parts.*

or begun in one  
county and com-  
pleted in an-  
other.

may be dealt with, inquired of, tried, determined, and punished in any of the said counties, in the same manner as if it had been actually and wholly committed therein." But, for the trial to be good in either county under this Act, the offence must be laid and tried in one and the same county. Where the venue was laid in one county and the *venire* awarded into the other, and trial had thereon, judgment was arrested. (*Reg. v. Mitchell*, 2 Q. B. 636.) If any felony (except murder) or any misdemeanour be begun in some English county and completed abroad, or *vice versâ*; or begun on shore and completed on the high seas, or *vice versâ*,—such cases are untouched by this statute. However, the case of a felony committed on the high seas, to which a person is accessory in some English county, and *vice versâ*, is provided for by the 24 & 25 Vict. c. 94, s. 7, as will be seen, tit. "Accessory," Vol. I. (See *Car. C. L.* 20.) The above provision of the 7 Geo. 4, c. 64, s. 12, is confined to county boundaries, and to prosecutions in counties. It does not apply to prosecutions in limited jurisdictions. Thus, a felony was committed in the county of the city of London, (on London Bridge), and within five hundred yards of that part of the county of Surrey which consists of the borough of Southwark:—Held, that this was not a case triable at the sessions of the borough of Southwark. (*R. v. Welsh*, *Car. C. L.* 21; 1 *Moo. C. C.* 175, *S. C.*) If a man commit a larceny, simple or compound, in one county, and carry the goods with him into another, he may be indicted for the simple or compound larceny in the county in which he committed it, or he may be indicted for it as for a simple larceny in the county into which, or in any of the counties through which, he carried the goods; for, in contemplation of law, there is such a taking and carrying away as constitute the offence of larceny in every place through which, at any distance of time (*R. v. Parkin*, *R. & M.* 45), the goods were carried by him. (1 *Hale*, 507; 2 *Id.* 163; 3 *Inst.* 113; 1 *Hawk. c.* 33, s. 52; 4 *Bl. Com.* 304; 2 *East*, *P. C.* 771.) The larceny itself is ambulatory; but the aggravated circumstances are fixed and stationary. (1 *Hale*, 536; *R. v. Thomson*, 2 *Russ.* 174.) A note was stolen in its transit from Swindon, in Wiltshire, to Bristol, and was afterwards posted by the defendant in Somersetshire, addressed to the Bankers at Swindon, where in due course it arrived; and it was held that the defendant was triable in Wiltshire, the possession of the Post-Office or of the Bankers being the possession of the prisoner. (*Reg. v. Cryer*, 1 *Dears & B. C. C.* 324.) So, if a man, having stolen or otherwise feloniously taken any chattel, money, or valuable security, or other property whatsoever, in any one part of the united kingdom, afterwards have the same in his possession in any other part of the united kingdom, he may be indicted for larceny or theft in that part of the united kingdom in which he so had the property, in the same manner as if he had actually stolen it there. (24 & 25 Vict. c. 96, s. 114.) But, if the nature of the property be changed, an indictment for stealing the article in its original state cannot be preferred in the county into which, when so changed, the property is carried. (*R. v. Edwards*, *R. & R.* 497.) And an indictment in the county of H., for stealing "one brass furnace," is not supported by evidence that the prisoner stole the furnace in the county of R., and there broke it to pieces, and brought the pieces into the county of H. R.) *v. Halloway*, 1 *C. & P.* 127.)

Where several commit a joint felony in the county of A., and there divide the goods, and afterwards separately carry each his respective share into the county of B., they cannot be indicted for a joint felony in the latter county. (*R. v. Barnett*, 2 *Russ.* 4th ed. 329, see, however, the 7 Geo. 4, c. 64, s. 13.) But, if two jointly commit a larceny in one county, and one of them carry the stolen goods into a different county, the other still accompanying him, without their ever being separated, they are both indictable in either county; the possession of one being the possession of both in each of the counties, as long as they continue in company. (*R. v. M'Donagh*, *Old Bailey*, 1824; *R. v. County*, 2 *Russ.*

4th ed. 330.) The taking into the second county, however, must be *animo furandi*, the mere possession there is not sufficient. A constable took the defendant with two stolen horses in Surrey, and afterwards, at his request, rode with him on the horses into Kent; the judges were unanimously of opinion that there was no evidence of stealing in Kent. (*R. v. Simmonds*, 1 *Moo. C. C.* 408.) If, however, the original taking was one of which the common law could not take cognizance, as if the goods were stolen at sea, the thief could not formerly have been indicted for the larceny in any county into which he might have carried the goods, but the larceny must have been tried as other cases within the jurisdiction of the Admiralty. But see now the 24 & 25 Vict. c. 96, s. 115, by which offences committed within the jurisdiction of the Admiralty may be tried in the county where the offender is apprehended, etc. A prisoner, having stolen goods on the island of Jersey, had them in his possession in the county of Dorset, in which he was indicted and convicted; but it was holden that the conviction was wrong, because the original taking was such whereof the common law could not take notice, and, the island of Jersey not being considered part of the united kingdom, the case was not within the stat. 7 & 8 Geo. 4, c. 29, s. 76, of which the 24 & 25 Vict. c. 96, s. 114 is a re-enactment. (*R. v. Prowes*, *R. & M. C. C.* 349; see *R. v. Madge*, 9 *C. & P.* 29.)

So, where A. ripped lead from a church in Berks, and afterwards, having it in his possession in Middlesex, was indicted in the latter county for a simple larceny at common law, it was held that he could not be indicted in the latter county, the original offence not being a larceny at common law, but a statutable offence only. (*R. v. Millar*, 7 *C. & P.* 665.)

As to detached parts of counties, see the 7 & 8 Vict. c. 61, s. 1, and the 2 & 3 Vict. c. 82; see also tit. "*Larceny*," *post*.

In an indictment for conspiracy, the venue may be laid in any county in which it can be proved that an act was done by any one of the conspirators in furtherance of their common design. (See 4 *East*, 164, and tit. "*Conspiracy*," *Vol. I.* And see *R. v. Lord Preston*, 4 *St. Tr.* 410, 455; *Post*. 9.)

## 8. Particular Requisites and Parts.

### Conspiracy.

In an indictment for sending a threatening letter, the venue may be laid, either in the county where the prosecutor received it (2 *East*, *P. C.* 1125, 1120; 1 *Leach*, 142), or in the county from which the offender sent it. (See *R. v. Watson*, 1 *Camp.* 215; *R. v. Williams*, 2 *Id.* 506; *R. v. Burdett*, 3 *B. & Ald.* 717.) So, if a libel (*R. v. Burdett*, 4 *B. & Ald.* 95; *R. v. Watson*, 1 *Camp.* 215), or a letter containing a challenge, be sent from the county of A. to the county of B., the venue may be laid in either county. So, if an act done in one county prove a nuisance in another, it seems that, in an indictment for it, the venue may be laid in either county, although it seems more correct to lay it in the county in which the act was done. (*Staudf.* b. 2, 91.)

### Threatening letter.

Where a servant had received money for his master in the county of A., and, upon returning to his master in the county of B., denied having received it, the judges held that his being indicted for the embezzlement in the county of B. was correct, for he could not be said to have embezzled the money until he refused to account for it. (*R. v. Taylor*, 3 *B. & P.* 596. And see the 7 Geo. 4, c. 64, s. 12, *supra*.)

### Embezzlement.

It is a general rule, that, where a statute creating a new felony directs that it may be tried in the county where the offender is apprehended, without containing any negative words, the provision is only cumulative, and he may still be tried in the county where the offence was committed. (1 *Hale*, 694; 3 *Inst.* 87.)

*Offences committed on Persons or Property in Coaches employed on Journeys, or in Vessels employed in Inland Navigation.*—The 7 Geo. 4, c. 64, s. 13, "For the more effectual prosecution of offences com-

Offences to persons or property in or upon coaches, etc., or vessels, etc.



8. *Particular  
Requisites  
and Parts.*

mitted during journeys from place to place" enacts "that, where any felony or misdemeanour shall be committed on any person, or on or in respect of *any* property, in or upon *any* coach, waggon, cart, or other carriage whatever, employed in any journey, or shall be committed on any person, or on or in respect of *any* property, on board *any* vessel whatever, employed on any voyage or journey upon any navigable river, canal, or inland navigation, such felony or misdemeanour may be dealt with, inquired of, tried, determined, and punished in any county, through any part whereof such coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanour shall have been committed, in the same manner as if it had been actually committed in such county; and in all cases where the side, centre, or other part of any highway, or the side, bank, centre, or other part of any such river, canal, or navigation, shall constitute the boundary of any two counties, such felony or misdemeanour may be dealt with, inquired of, tried, determined, and punished in either of the said counties through, or adjoining to, or by the boundary of any part whereof such coach, waggon, cart, carriage, or vessel shall have passed in the course of the journey or voyage during which such felony or misdemeanour shall have been committed, in the same manner as if it had been actually committed in such county." This enactment extends to any carriage whatever employed in any journey. (*Reg. v. Sharpe, Dears. C. C.* 415.) Railway trains are within the statute. (*Reg. v. French, 8 Cox, C. C.* 252.)

Offences in  
towns corporate.

*Offences in Towns Corporate, etc.*—Where an offence is committed within the county of a city or town corporate (except in London, Westminster, or the borough of Southwark (38 Geo. 3, c. 52, s. 10), so much of that statute as applied to the cities of Bristol, Chester, and Exeter having been repealed by the 5 & 6 Will. 4, c. 76, s. 109; see *Reg. v. Holden, 8 C. & P.* 606), the prosecutor may prefer his indictment to the jury of the next adjoining county, at the sessions of oyer and terminer, or gaol delivery, and have the offender tried there (38 Geo. 3, c. 52, s. 2); but in that case the venue must still be laid in the county of the city, etc., where the offence was committed. (*Vide R. v. Mellor, R. & R.* 144, and the 14 & 15 Vict. c. 100, s. 23.) And it need not be averred that the county in which the indictment is preferred is the next adjoining county to the county of the town, etc.; but, when the record is drawn up, it may appear in the caption or memorandum. (*R. v. Goff, R. & R.* 179.) Or, if the bill have been found by a jury of the county of the city, etc., any court of oyer and terminer, or gaol delivery, holden for such county of the city, etc., may order it to be tried by a jury of the next adjoining county. (38 Geo. 3, c. 52, s. 2.) In both of which cases, the court before which the offender is tried and convicted may order the judgment to be executed, either in the same county, or in the county of the city in which the offence was committed (51 Geo. 3, c. 100, s. 1); and may order the expenses of prosecution and witnesses (38 Geo. 3, c. 52, s. 3), and the expenses the county may have been put to by the removal of the prisoner there for trial, etc. (51 Geo. 3, c. 100, s. 2), to be paid by the person who would have been ordered to pay the same, if the offender had been indicted and tried in such county of a city, etc. (See 60 Geo. 3, c. 14, s. 3; 7 Geo. 4, c. 64, s. 25; 5 & 6 Will. 4, c. 76, s. 113; 5 & 6 Vict. c. 38; *Arch. C. L.*, 15th ed. 22.) And now by the 14 & 15 Vict. c. 55, s. 19, prisoners committed to the gaol or house of correction of a city or county of a town and not triable at quarter sessions, may be tried in the adjoining county. And as to venue, see the 14 & 15 Vict. c. 100, s. 23, *post*, p. 21.

Offences in  
Wales.

*Offences in Wales.*—In indictments for felonies or other offences committed in Wales, the venue might formerly have been laid in the next adjacent English county. (26 Hen. 8, c. 6, s. 6, which extended

to felonies subsequently created; *R. v. Wyndham, R. & R.* 197; 3 *Camp.* 78; 34 & 35 Hen. 8, c. 26, s. 84.) But now these statutes are repealed by implication by the 11 Geo. 4 & 1 Will. 4, c. 70, s. 14; and in indictments for offences committed in Wales, the venue must, as in England, be laid in the county in which the offence is committed, unless otherwise provided for by statute.

### 8. Particular Requisites and Parts.

*Offences in Scotland or Ireland.*—In general, offences committed in Scotland or Ireland are indictable only there; and, if the party be apprehended here, he must be sent thither for trial. (13 Geo. 3, c. 31; 44 Geo. 3, c. 92; 1 *East's P. C.* 772.)

Offences in Scotland or Ireland.

If goods were stolen in Scotland or Ireland, and brought by the offender into England, he could not be indicted here. (2 *East's P. C.* 772. And see 3 *Inst.* 113; 13 *Co.* 53. But see 1 *Stark. Cr. L.* 2, n. (g).) To remedy this, several statutes were passed; and now by the 24 & 25 Vict. c. 96, s. 114, a person having stolen property in his possession, whether he stole it or received it, may be indicted in that part of the united kingdom where he has the property.

*Offences Abroad.*—As to the venue on indictments for offences committed abroad, or on the high seas, see tit. "*Admiralty*," Vol. I.

Offences abroad, etc.

#### (b) Defective Venue, when cured.

By the 7 Geo. 4, c. 64, s. 20, "no judgment upon any indictment or information for any felony or misdemeanour, whether after verdict or outlawry, or by confession, default, or otherwise, shall be stayed or reversed for want of a proper or perfect venue, where the Court shall appear by the indictment or information to have had jurisdiction over the offence." (See *Reg. v. Albert*, 12 *L. J. (N. S.)*, *M. C.* 117.) And now by the 14 & 15 Vict. c. 100, s. 24, no indictment shall be holden insufficient for want of a proper or perfect venue.

Defective venue, when cured.

The entire omission of venue has been held not to be cured after verdict by the 7 Geo. 4, c. 64, s. 20. (*Reg. v. O'Connor*, 13 *L. J. (N. S.)*, *M. C.* 33; 5 *Q. B.* 16.)

And, though that act cured a wrong venue, it did not cure a venue into a wrong county. (*R. v. Mitchell*, 2 *Q. B.* 636.)

#### (c) Mode of stating Venue.

The venue, that is, the county in which the indictment is preferred, is stated in the margin thus, "*Middlesex*," or "*Middlesex*, to wit;" but the latter method is the most usual. In the body of the indictment, also, a special venue used to be laid, that is, the facts were in general stated to have arisen in the county in which the indictment was preferred. But now by the 14 & 15 Vict. c. 100, s. 23, it is provided that it shall not be necessary to state any venue in the body of any indictment, but the county, city, or other jurisdiction named in the margin thereof shall be taken to be the venue for all the facts stated in the body of such indictment; provided that in cases where local description is or hereafter shall be required, such local description shall be given in the body of the indictment. And, by the same section, where an indictment for an offence committed in the county of any city or town corporate shall be preferred at the assizes of the adjoining county, such county of the city or town shall be deemed the venue, and may either be stated in the margin of the indictment, with or without the name of the county in which the offender is to be tried, or be stated in the body of the indictment by way of venue.

Mode of stating venue.

In indictments founded upon the statutes which authorize a mode or place of trial that did not exist at common law, all facts within the realm should be laid in the county where they actually happened. (See

8. *Particular Requisites and Parts.* 1 *Chit. C. L.* 195, and cases there collected.) Indictments for offences committed upon the high seas should allege the crimes to have been committed there. (3 *Inst.* 112; *Bac. Abr. Admiralty*, (D); 1 *Leach*, 388.)

In some cases, where the offence is of a peculiar *local description*, more particularity in the statement is necessary: thus, an indictment under the 57 Geo. 3, c. 90 (now the 9 Geo. 4, c. 69, tit. "*Game*," Vol. II.), for being armed at night in a close to kill game, must show the particular close by name, or name its owner, or otherwise particularize it. (*R. v. Ridley*, *R. & R.* 515, three of the judges *diss.*)

If the statute upon which an indictment is framed give the penalty to the poor of the parish in which the offence was committed, the parish must be truly stated.

(d) *Consequences of defective Statement or Omission of Venue.*

Consequences of defective statement or omission of venue.

An improper statement or omission of venue might, at one time, be taken advantage of in arrest of judgment or by writ of error; but by the 7 Geo. 4, c. 64, s. 20, the want of a proper or perfect venue is not a ground for arresting or reversing the judgment. Such a defect would still be open to demurrer under that statute; but by the 14 & 15 Vict. c. 100, s. 24, no indictment shall be held insufficient for want of a proper or perfect venue. It seems that an entire omission of venue is not provided for, and that such an omission might still be taken advantage of. No venue need now be stated in the body of the indictment (except where local description is required), but the name of the county, etc., in the margin shall be taken to be the venue. (See the 14 & 15 Vict. c. 100, s. 23, *ante*, p. 21.) An entire omission of venue, though it might be taken advantage of under s. 25 of the above statute by way of demurrer or motion to quash the indictment, would probably be rectified by amendment under that section.

Where particular description is required by reason of the place being of the essence of the crime, as in striking in a churchyard (2 *Hale*, 179, 244-5; 2 *Hawk.* c. 25, s. 84; *Id.* c. 46, s. 181, 182; 1 *East*, *P.C.* 125); or, in an indictment on the 9 Geo. 4, c. 69, for being found armed in a close at night (*R. v. Ridley*, *R. & R.* C.C. 515, *supra*); or, where the place is stated as a matter of local description in indictments for burglary, or not repairing or any other nuisance to a public thoroughfare, a variance in the statement will be fatal (*Ib.*; 1 *Burr.* 333), unless amended.

3. NAME AND ADDITION OF DEFENDANT.

3 Name and addition of defendant.  
How to be stated.

The defendant must be described, in the indictment, by his Christian name and surname. (2 *Hale*, 175.)

The inhabitants of a parish may be indicted for not repairing a highway, or the inhabitants of a county for not repairing a bridge, without naming any of them. (*Roll. Abr.* 79; 2 *Hawk.* c. 25, s. 68; *Wood's Inst.* b. 4, c. 5.)

The name may be such as the defendant has usually gone by or acknowledged; and, if there be a doubt which one of two names is his real name, the second may be added in the indictment after an *alias dictus*, thus, "*Richard Wilson, otherwise called Richard Layer*." (*Post*, p. 23.)

If the name of the defendant be unknown, and he refuse to disclose it, an indictment against him as "a person whose name is to the jurors unknown, but who was personally brought before the said jurors, by —, the keeper of — prison," will be sufficient. (*R. v. —*, *R. & R. C. C.* R. 489.) But an indictment against him as a person to the jurors unknown is insufficient, if there be not something to ascertain the person meant by the grand jury. (*Ib.*)

The name of the defendant committing the offence should be repeated in every distinct allegation; but it will suffice to mention it once, as the nominative case, in one continuing sentence. (4 *Harg. St. Tr.* 747.)

The additions required to be given to defendants in an indictment, by the 1 Hen. 5, c. 5, are, the addition of their "estate, or degree, or mystery," and also the addition of the "towns, or hamlets, or places, and counties of which they were or be, or in which they be or were conversant." But the 7 Geo. 4, c. 64, s. 19, enabled the Court upon affidavit to amend the indictment in case of misnomer or where the addition was wanting or erroneous, and to call upon the party to plead; and now by the 14 & 15 Vict. c. 100, s. 24, "no indictment shall be holden insufficient for want of or imperfection in the addition of any defendant;" and under the first section the Court has power to amend in case of misnomer.

This enactment makes pleas in abatement for *misnomer* of very little use. We therefore forbear entering into a full detail of the law as to what is a sufficient description of a defendant's name. See such law fully collected in 1 *Chit. Cr. Law*, 202 to 210; *Jervis's Archb. Cr. Law*, 9th edit., 27, &c.; and see tit. "*Abatement*," Vol. I., as to pleas in abatement.

#### 4. NAME AND DESCRIPTION OF PROSECUTOR AND THIRD PERSONS.

*When known.*—Wherever the name of the person injured is known to the jurors, his Christian and surname ought to be put in the indictment. (2 *Hawk. c. 25*, s. 71.) But he may be described by the name he has assumed, though not his right name. (*R. v. Norton*, *R. & R. C. C.* 510; *R. v. Sull*, 1 *Leach*, 100 to 105; *R. v. Berriman*, 5 *C. & P.* 601; *Anon.*, 6 *C. & P.* 408; *R. v. J. Williams*, 7 *C. & P.* 298.) And, upon an indictment for the murder of a bastard child, it cannot be described by the name of its mother, unless that name be gained by reputation. (*R. v. Clark*, *R. & R.* 358; *R. v. Evans*, 8 *C. & P.* 765; *R. v. Smith*, 1 *Moo. C. C.* 402; *R. v. Waters*, 7 *C. & P.* 250.)

*When unknown.*—But, if they know not his name, an indictment for the murder of a person unknown, or for stealing the goods of a person unknown, is good. (2 *Hale*, 181; 1 *Chit. Crim. Law*, 212, 213.) And a child cannot be described as "a certain male infant of tender age, to wit, of the age of &c., and not baptized:" the indictment must either state its name, or state it to be to the jurors unknown. (*Reg. v. Biss*, 2 *Moo. C. C.* 93; 8 *C. & P.* 773; *Reg. v. Hicks*, 2 *M. & Rob.* 302.) But the absence of a name was held to be sufficiently accounted for by the child being described as "then lately before born of the body of A. B." (*Reg. v. Hogg*, 2 *M. & Rob.* 380. See *Reg. v. Willis*, 1 *Den. C. C.* 80); or "a certain infant female child born of the body of A. B. and of tender age, to wit, of the age of two days, and not named." (*Reg. v. Waters*, 1 *Den. C. C.* 356.)

If the person injured be described as a certain person to the jurors unknown, and it appear in evidence that his name is known, it is a variance. (See *R. v. Walker*, 3 *Camp.* 264; *R. v. Robinson*, 1 *Holt*, 595.) But it would be amended under the 14 & 15 Vict. c. 100, s. 1.

*Addition of Party.*—Also, there is no need to state the addition of the person upon whom the offence is committed, unless there be a plurality of persons of the same name; neither then is it essential to the indictment, though sometimes it may be convenient, for distinction's sake, to add it. (2 *Hale*, 182.) Where it appeared that the party injured had a mother of the same name, the Court held that it was not necessary to distinguish her in the indictment by the addition "the younger," although it was objected that in such a case, where such an addition is not given, the presumption is that it is the parent and not the child that is intended; and some cases were cited to that effect. (*R. v. Peace*, 3 *B. & Ald.* 579.)

*Dignity of Party.*—If the third party has a name and dignity, as a peer, baronet, or knight, he should be properly described by it, because a name of dignity is not merely an addition, but, being the very appellation by which the individual is commonly known, becomes, therefore,

#### 8. Particular Requisites and Parts.

4. Name and description of prosecutor and third persons. How to be stated. When name known.

When unknown.

Addition.

Dignity.

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actually part of his name. A variance, therefore, in this respect is fatal, unless amended; as, to describe a man a marquis, when he is an earl; or a knight, when he is, in fact, a baronet. (2 *Hawk.* c. 25, ss. 70, 71.) The usual way of describing a peer is by his Christian name and his title, as, Lawrence Earl of Ferrers, omitting his family surname; but there seems to be no objection to describe him also by his surname, as William Byron, Baron Byron. (19 *St. Tr.* 1177; *R. v. Brinklett*, 3 *C. & P.* 416.) A baron has been held well described as Lord A. (*Reg. v. Pitts*, 8 *C. & P.* 771; *Reg. v. Elliott*, *Id.* 772, *n.*) So "His Royal Highness the Duke of Cambridge" has been held sufficient. (*Reg. v. Frost, Dears.* *C. C.* 474.)

Bastards.

*Bastards.*]—A bastard should be described by the name he has gained by reputation, and not by his mother's name, unless he has gained that name by reputation. (*R. v. Clarke*, *R. & R.* 358. See tit. "*Bastards*," *Vol. I.*)

*Idem sonans.*

*Idem Sonans.*]—If the sound of the name be not affected by the mis-spelling, such mis-spelling will be immaterial; and, even where the sound is affected, the variance may be amended under the 14 & 15 Vict. c. 100, s. 1.

In larceny, bur-  
glary, forgery,  
etc.

As to the mode of describing the names of the party injured, and others, in the particular offences of larceny, burglary, forgery, etc., see those titles.

Corporation.

*Corporation.*]—Where the property stolen or injured belongs to a corporation, it must be laid to be the property of the corporation in their corporate name, and not in the names of the individuals who compose it. (3 *East's P. C.* 1059; 1 *Leach*, 253.) There is some difference, however, in this respect, between an ancient corporation and one newly created: an ancient corporation may by use have a special name, differing in substance from that by which they were originally incorporated, and they may plead and be impleaded by that name; but a corporation created within memory must plead and be impleaded by the name by which they were incorporated. (*Hob.* 211; *Noy*, 54; 2 *Brownl.* 292; *Latch*, 229; *Bagg's case*, 11 *Co.* 94; *Dy.* 279; *R. v. Atkins*, 3 *Mod.* 6; *Vaughan v. Bedford, Cro. El.* 351; *Bac. Abr. Corp.* (C 3). And see 10 *Co.* 87; 1 *Leach*, 513.) Where, by a local Act, 24 *Geo.* 3, c. 15, certain inhabitants in seven parishes were incorporated by the name of "the guardians of the poor of those parishes," and the property belonging to the corporation was vested in certain directors for the time being, the judges held, upon an indictment for embezzling the moneys of the corporation, that they should have been laid as the moneys of the guardians of the poor by their corporate name, or of the directors for the time being in their individual names. (*R. v. Beacall, R. & M. C. C.* 15. *Vide Sherington and Bulkeley's case*, 1 *Leach, C. C.* 513.)

Partners, joint  
owners, and  
companies, etc.

*Partners, Joint Owners, Companies, etc.*]—Various statutes have been passed to remedy the difficulty experienced in describing the names of owners of property. Thus, by the 7 *Geo.* 4, c. 64, s. 14, "to remove the difficulty of stating the names of all the owners of property in the case of partners and other joint owners," it is enacted that, "in any indictment or information for any felony or misdemeanour, wherein it shall be requisite to state the ownership of any property whatsoever, whether real or personal, which shall belong to, or be in the possession of, more than one person, whether such persons be partners in trade, joint-tenants, parceners, or tenants in common, it shall be sufficient to name one of such persons, and to state such property to belong to the person so named and another or others, as the case may be; and whenever, in any indictment or information for any felony or misdemeanour, it shall be necessary to mention, for any purpose whatsoever, any partners, joint-tenants, parceners, or tenants in common, it shall be sufficient to describe them in the manner aforesaid; and this provision shall be construed to

extend to all joint-stock companies and trustees." Now, therefore, whenever, in an indictment or information, either for felony or misdemeanour, it is necessary to state the ownership of property, real or personal, if it belong to partners, joint-tenants, parceners, or tenants in common, it is sufficient to lay it as the property of "A. B. and another," or as the property of "A. B. and others;" and this provision also extends to all cases where it is necessary to mention such persons for any purpose in any indictment or information. And, which is highly important, this enactment extends to joint-stock companies, many of which are not bodies corporate, and also to trustees. This, as far as regarded companies, was not before included in any general enactment; although, in private Acts of Parliament which related to insurance companies, etc., it was not unusual to insert a clause, that they should sue and be sued by their secretary, and that their property should be laid, in indictments, etc., as belonging to him. (See *Car. C. L.* 26.) The words of the statute are "another or others;" and, therefore, where a prisoner was indicted for stealing paper, the property of George Eyre and others, and it appeared in evidence that the paper was the property of George Eyre and another only, viz. Andrew Strahan, his partner, the prisoner was acquitted. (*Per Denman*, Com. Serj., *R. v. Hampton*, *Greenw. Col. Stat.* 143. See *Reg. v. Kealey*, 2 Den. C. C. 68.) Such a variance would, however, not now be fatal, if amended. It is not necessary that a strict legal partnership should exist. Where C. and D. carried on business in partnership, and the widow of C., upon his death, without taking out administration, acted as partner, and the stock was afterwards divided between her and the surviving partner, but, before the division, part of the stock was stolen; it was holden, that the goods were properly described as the joint property of the surviving partner and the widow, upon an objection that the children of C. ought to have been joined, or the goods described as the property of the surviving partner and the ordinary, no administration having been taken out. (*R. v. Gabey*, *R. & R.* 178.) And, where a father and son took a farm on their joint account, and kept a stock of sheep, their joint property, and upon the death of the son the father carried on the business for the joint benefit of himself and his son's children, who were infants, it was holden, upon an indictment for stealing sheep bred from the joint stock, some before and some after the death of the son, that the property was well laid in the father and his son's children. (*R. v. Scott*, *R. & R.* 13; 2 *East*, *P. C.* 655.) In an indictment for stealing a Bible, a hymn-book, etc., from a Methodist chapel, the goods were laid as the property of John Bennett and others, and it appeared that J. Bennett was one of the society, and a trustee of the chapel: *Parke*, J., held that the property was laid correctly in Bennett. (*R. v. Boulton*, 5 *C. & P.* 537; *Arch. C. L.*, 15th ed. p. 36.) In indictments or informations by or on behalf of joint-stock banking co-partnerships, for stealing or embezzling money, goods, effects bills, notes, securities, or other property belonging to them, or for any fraud, forgery, crime, or offence committed against or with intent to injure or defraud such co-partnerships, the money, etc., may be stated to be the property of, and the intent may be laid to defraud, any one of the public officers of such co-partnerships; and the name of any one of their public officers may be used in all indictments or informations where it otherwise would be necessary to name the persons forming the company. (7 *Geo. 4*, c. 46, s. 9.) It has been doubted, whether, upon an indictment by a joint-stock bank for forgery, the intent must not be laid to defraud a public officer of such co-partnership (*R. v. Burgess*, 7 *C. & P.* 490); but the better opinion seems to be that this statute is cumulative merely (*R. v. James*, 7 *C. & P.* 553), and that the prosecutor may at his option describe the property, or lay the intent, according to this statute, or the stat. 7 *Geo. 4*, c. 64, s. 14, or the stat. 11 *Geo. 4* & 1 *Will. 4*, c. 66, s. 28, by which it is sufficient in any indictment for forgery to name one person only, where the intent is to defraud a com-

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pany, society, or number of persons, and to allege the offence to have been committed with intent to defraud the person so named, and another or others, as the case may be. (*Arch. C. L.*, 15th ed. p. 36.) The last case upon this subject decided that the property of a banking co-partnership carrying on business under the 7 Geo. 4, c. 46, may be described as the property of one of the partners and others under the 7 Geo. 4, c. 64, s. 14. (*Reg. v. Pritchard*, *L. & C.* 34; 30 *L. J.*, *M. C.* 169.)

Counties, inhabitants, etc.

*Counties, Inhabitants, etc.*—With respect to the description of the owner of property belonging to a county or division, it is enacted, by the 7 Geo. 4, c. 64, s. 15, “that, in any indictment or information for any felony or misdemeanour committed in, upon, or with respect to any bridge, court, gaol, house of correction, infirmary, asylum, or other building erected or maintained, in whole or in part, at the expense of any county, riding, or division, or on or with respect to any goods or chattels whatsoever, provided for or at the expense of any county, riding, or division, to be used for making, altering, or repairing any bridge, or any highway at the ends thereof, or any court or other such building as aforesaid, or to be used in or with any such court or other building, it shall be sufficient to state any such property, real or personal, to belong to the *inhabitants* of such county, riding, or division, and it shall not be necessary to specify the names of any of such inhabitants.” In all these cases it is now sufficient, under this Act, to lay the property in “the inhabitants” of the county, riding, or division, without naming any of them.

Parish, township, etc.

*Parishes, Townships, etc.*—With respect to the description of the owner of property belonging to a parish, township, or place, the 7 Geo. 4, c. 64, s. 16, enacts that, “in any indictment or information for any felony or misdemeanour committed in, upon, or with respect to any workhouse or poor-house, or on or with respect to any goods or chattels whatsoever, provided for the use of the poor of any parish or parishes, township or townships, hamlet or hamlets, place or places, or to be used in any workhouse or poor-house in or belonging to the same, or by the master or mistress of such workhouse or poor-house, or by any workmen or servants employed therein, it shall be sufficient to state any such property to belong to the overseers of the poor, *for the time being*, of such parish or parishes, township or townships, hamlet or hamlets, place or places, and it shall not be necessary to specify the names of all or any of such overseers; and in any indictment or information for any felony or misdemeanour committed on or with respect to any materials, tools, or implements provided for making, altering, or repairing any highway within any parish, township, hamlet, or place, otherwise than by the trustees or commissioners of any *turnpike road*, it shall be sufficient to aver that any such things are the property of the *surveyor* or *surveyors* of the highways, *for the time being*, of such parish, township, hamlet, or place, and it shall not be necessary to specify the name or names of any such surveyor or surveyors.”

In *R. v. Went* (*R. & R.* 359), the prisoner was charged with stealing provisions in a workhouse: they were laid as the “goods, chattels, and property of the overseers of the poor, *for the time being*, of the parish of K. aforesaid;” and the judges held that this was proper, and sufficiently imported that, at the time of the theft, the goods were the property of the *then* overseers of the poor. But, where a local Act incorporates certain inhabitants of certain parishes by a *certain title*, although, according to the Act, a number of directors are to be appointed, and the property of the corporation vested in them, still property stolen or embezzled must be laid in the corporate name, or in the directors for the time being in their individual names. (*R. v. Beacall*, 1 *Moo. C. C.* 15.)

Guardians of poor.

*Guardians of Poor.*—By the 5 & 6 Will. 4, c. 69, s. 7, the guardians

of the poor of every union formed by virtue of the 4 & 5 Will. 4, c. 76, and of every parish placed under the control of a board of guardians by virtue of that Act, are made a corporation, by the name of the "Guardians of the Poor of the — Union [or, of the Parish of —], in the County of —;" and, as such corporation, are empowered to accept, take, and hold, for the benefit of the union or parish, any buildings, land, or hereditaments, goods, effects, or other property, and by that name to bring actions, to prefer indictments, etc.; and in every such action or indictment relating to any such property, it shall be sufficient to lay or state the property to be that of the guardians of the — union, or of the parish of —. (See the 5 & 6 Vict. c. 57, s. 16.) The Poor Law Commissioners may be described in an indictment by their style of office. (*R. v. Crossley*, 2 *P. & D.* 319.)

8. *Particular Requisites and Parts.*

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*Turnpike Trustees, etc.*]—With respect to the description of the owners of property belonging to a turnpike trust, it is enacted by the 7 Geo. 4, c. 64, s. 17, "that, in any indictment or information for any felony or misdemeanour committed on or with respect to any house, building, gate, machine, lamp, board, stone, post, fence, or *other thing*, erected or provided in pursuance of any Act of Parliament for making any turnpike road, or any of the conveniences or appurtenances thereunto respectively belonging, or any materials, tools, or implements provided for making, altering, or repairing any such road, it shall be sufficient to state any such property to belong to the trustees or commissioners of such road, and it shall not be necessary to specify the names of any of such trustees or commissioners." We have already made a few comments on this provision, tit. "*Highways, Turnpike*, Vol. II."

Turnpike trust.

*Commissioners of Sewers.*]—With respect to the description of the owners of property in or under the management of commissioners of sewers, by the 7 Geo. 4, c. 64, s. 18, it is enacted that, "in any indictment or information for any felony or misdemeanour committed on or with respect to any sewer or *other matter* within or under the view, cognizance, or management of any commissioners of sewers, it shall be sufficient to state any such property to belong to the commissioners of sewers within or under whose view, cognizance, or management any such things shall be; and it shall not be necessary to specify the names of any of such commissioners."

Commissioners of sewers.

*Chelsea Hospital.*]—With respect to the description of the owners of property belonging to Chelsea Hospital, by the 7 Geo. 4, c. 16, s. 35, in indictments for stealing or embezzling any property belonging to the hospital, the property is to be laid in "the Lords and others, Commissioners of the Royal Hospital for Soldiers at Chelsea, in the County of Middlesex;" and the same section contains a similar provision respecting frauds by personating, etc., and forgeries relative to this hospital.

Chelsea Hospital.

*Public Service.*]—Moneys or valuable securities embezzled by persons in the public service may be described as the property of the Queen. (See the 24 & 25 Vict. c. 96, s. 70.) Goods stolen in the house of a person who had been convicted of felony, and is undergoing his sentence, may be described as the property of the Queen, although there has been no offence found. (*Reg. v. Whitehead*, 9 *C. & P.* 429.) In indictments for stealing post-letters, etc., the property may be laid in the Postmaster-General. (7 Will. 4 & 1 Vict. c. 36, s. 40, *post*, "*Post-Office*.")

Public service.

Post Office.

*Friendly Societies.*]—By the 18 & 19 Vict. c. 63, s. 18, the moneys, goods, chattels, securities for money, and all other effects whatever, belonging to any friendly society, must be described to be the property of the trustee of the society for the time being. Trustees cannot, therefore, be guilty of stealing the property of the society: (*Reg. v. Loose, Bell*, *C.C.*

Friendly societies.



8. *Particular Requisites and Parts.*

259.) A box, belonging to a benefit society, was stolen from a room in a public-house. Two of the stewards had keys of this box, and by the rules of the society the landlord ought to have had a key, but in fact had not; and it was holden that the prisoner might be convicted on a count laying the property in the landlord alone. (*R. v. Wymer*, 4 C. & P. 391; see the 4 & 5 Will. 4, c. 40.)

Consequences of misnomer of prosecutor or third persons.

The consequences of a misnomer or mis-statement in the name of the prosecutor or third persons are now of very little importance; for it has been enacted that no indictment for any offence shall be held insufficient, for that any person mentioned in the indictment is designated by a name of office, or other descriptive appellation, instead of his proper name. (14 & 15 Vict. c. 100, s. 24.) And, although there should appear upon the trial to be a variance between the indictment and the evidence in the name or description of any person or body politic or corporate therein alleged to be the owner or owners of any property, real or personal, which shall form the subject of any offence charged therein, or in the name or description of any person or body politic or corporate therein alleged to be injured or damaged, or intended to be injured or damaged by the commission of such offence, or in the Christian name or surname, or both Christian name and surname, or other description whatsoever of any person or persons whomsoever therein named or described, the Court may order the indictment to be amended, if it consider the variance not material to the merits of the case, and that the defendant cannot thereby be prejudiced in his defence on the merits. (14 & 15 Vict. c. 100, s. 1.)

5. STATEMENT OF TIME, ETC.

5. Statement of time, etc.  
How to be stated.

It was a general rule, that the time and place of every *material* fact which is issuable and triable must be plainly and consistently alleged; and such a degree of precision did the law exact in this respect, that an uncertainty or incongruity in the description of time and place would have vitiated the indictment on demurrer. (1 *Stark. Crim. P.* 54, and the authorities there cited; *R. v. Hollond*, 5 T. R. 620.) But now by the 14 & 15 Vict. c. 100, s. 24, no indictment for any offence shall be holden insufficient for omitting to state the time at which the offence was committed in any case where time is not of the essence of the offence, nor for stating the time imperfectly, nor for stating the offence to have been committed on a day subsequent to the finding of the indictment, or on an impossible day, or on a day that never happened.

Year of the Queen.  
Year set out by inference.

It is most regular to set forth the year, by showing the year of the Queen; but the year of our Lord is unobjectionable. (2 *Hale*, 277; 1 *Chit. C. L.* 217.) And, if it say, on such a day last past, without showing in what year, that is good enough; for the certainty may be found out by the style of the sessions. (*Lamb*, 491.)

Hour.

But it is not necessary to mention the *hour* in an indictment (2 *Hawk. c.* 25, s. 76); and, if it be stated, no exception is allowed to it (*Combe v. Pitt*, 3 *Burr.* 1434; *Clarke's case*, 1 *Bulst.* 203); except in cases of burglary, where it must be laid for the purpose of showing that the offence was committed in the night-time.

Limited time.

Although a particular time be limited for the prosecution, and it must appear on the face of the proceedings that the prosecution was commenced within that period, no express averment to that effect is requisite. (*Lee v. Clarke*, 2 *East*, 333, 362.)

Consequences of defective statement of time.

Though the day or year be mistaken in the indictment, yet, if the offence were committed in the same county, though at another time, the offender ought to be found guilty. (2 *Hale*, 179.)

It is not necessary that the time should be laid according to the truth; for, if it be stated previous to the finding of the indictment, and the place be within the county, or the extent of the Court's jurisdiction,

a variance between the indictment and evidence in the time when the offence was committed will not be material. (*Keb.* 16; 2 *Inst.* 318.)

It is, however, necessary to state the day and year according to the fact, where the precise date of a fact is a necessary ingredient in the offence. (See *R. v. Trehearne*, 1 *Moo. C. C.* 298.)

### 8. *Particular Requisites and Parts.*

#### 6. STATEMENT OF PLACE.

The requisites as to the statement of place, and the consequences of a defective statement or omission, will be found, *ante*, pp. 21, 22.

#### 6. Statement of place.

#### 7. STATEMENT OF THE OFFENCE ITSELF.

We have already, in considering the *general requisites* of an indictment, pointed out the mode in which the offence itself should be stated; and, as to the general requisites in stating offences on statutes, see the next section.

#### 7. Statement of the offence itself. General requisites.

The *particular* requisites to be observed, in stating each particular offence will be found pointed out under the various titles of offences throughout this work.

#### Particular requisites.

#### 8. STATEMENT OF STATUTES, AND OFFENCES THEREON.

There is no necessity, in any indictment or information on a *public* statute, to recite the statute upon which it is founded; for the judges are bound, *ex officio*, to take notice of all public statutes. (*Dyer*, 155 a; 2 *Hawk.* c. 25, s. 100; 1 *Saund.* 135, n. (3).) But, if the indictment profess to recite the statute, and there be a material variance, and the indictment conclude "contrary to the form of the *said* statute," such variance will be fatal; and, therefore, it is in no case advisable to recite it (*Vanderplunken v. Griffith*, *Cro. Eliz.* 236; 2 *Hawk.* c. 25, s. 101: *King v. Marsack*, 6 *T. R.* 776; 1 *Chit. C. L.* 276); though if, after such misrecital of a public Act, the indictment conclude generally, as, "contrary to the statute in such case made and provided," omitting any reference to the statute recited, the recital may be rejected as surplusage. (*Ib.*) But the parts of a *private* Act upon which an indictment is framed must be set out specially, the same as other facts; and a variance, if *properly shown* to the Court, will be fatal. (2 *Hawk.* c. 25, s. 103.) A statute passed in a session of Parliament begun in the second and continued in the third year of a king's reign must not be pleaded as passed in the *second and third years* of the reign, although such Act be recited in a later statute, as "passed in the second and third years," etc. (See *R. v. Biers*, 1 *A. & E.* 327.)

#### 8. Statement of statutes, and offences thereon.

Where a statute forbids the commission or omission of certain acts under certain circumstances, or with a particular intent, an indictment for an offence against the statute must, with certainty and precision, charge the defendant to have committed or omitted the acts, under the circumstances and with the intent mentioned in the statute; and, if any one of these ingredients in the offence be omitted, the defendant may demur, move in arrest of judgment, or bring a writ of error. The defect will not be aided by verdict (see *Lee v. Clarke*, 2 *East*, 333); nor will the conclusion *contra formam statuti* cure it. (2 *Hale*, 170. And see *R. v. Jukes*, 8 *T. R.* 536; *Com. Dig. Information* (D 3).) Thus, where a statute made it a felony "wilfully and maliciously" to do an act, an indictment was held bad, which omitted to charge the offence as "wilfully" done, though it was stated to be done "unlawfully and maliciously." (*R. v. Davis*, 1 *Leach*, 556. See also *Reg. v. Bent*; 1 *Den. C. C.* 157.) So the omission of the word "unlawfully" in charging an offence, where that word has been used in the statute, has been held to vitiate an indictment. (*R. v. Turner*, 1 *Moo. C. C.* 239; *Reg. v. Ryan*, 2 *Moo. C. C.* 15.) So, where an indictment charged in one count that the defendant did break *to get out*, and in another that he did break *and get*

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out, it was holden insufficient, because the words of the statute are "break out." (*R. v. Compton*, 7 *C. & P.* 139.) But, where a specific act is forbidden by a statute, the intention will not be material. Thus, a party is liable to be indicted under the 3 & 4 Vict. c. 97, s. 15, if he designedly places on a railway substances having a tendency to produce obstruction to the carriages, though he may not have done the act expressly with that object. (*Reg. v. Holroyd*, 2 *M. & Rob.* 339.) But it is not necessary to use the identical word to be found in the Act; it is sufficient, if the word substituted be synonymous with, or generic so as to contain, that used in the Act. Thus, "advisedly" may be substituted for "knowingly" (*R. v. Fuller*, 1 *B. & P.* 180), or "maliciously" for "wilfully." And in *Reg. v. M'Culley* (2 *Moo. C. C.* 34), an indictment under statute 7 & 8 Geo. 4, c. 29, s. 25, for killing a sheep, with intent to steal the carcase, was held to be supported by proof of killing a ram or ewe, the words of the statute being "ram, ewe, sheep, or lamb;" a majority of the judges considering "sheep" a generic term including the former words. (See also *Reg. v. Spicer*, 1 *Den. C. C.* 82.)

In some cases a mere statement of the offence, though in the very words of the statute, will not be sufficient. As where the statute uses generic terms, in which case it is necessary to state the species according to the truth of the case; as, for instance, where a statute makes a maliciously killing of cattle a felony, it is not sufficient in an indictment on the statute to charge the defendant with killing "cattle" generally, but the species of cattle, as horse, mare, gelding, cow, heifer, ox, etc., must be stated. (*R. v. Chalkely*, *R. & R.* 258.)

And, where the subject of the indictment cannot be brought within the meaning of the statute without the aid of extrinsic evidence, it is necessary, besides charging the offence in the words of the statute, to aver such facts and circumstances as may be necessary to bring the matter within the meaning of it; as, for instance, where, by the usage of a public office, the bare signature of a party upon a navy bill operates as a receipt, an indictment for forging such a receipt, setting forth the navy bill and indorsement, and charging the defendant with having forged "a certain receipt for money, to wit, the sum of £25, mentioned and contained in the said paper called a navy bill, which forged receipt was as follows, that is to say,—*William Thornton, William Hunter*," was holden bad, because it did not show by proper averments that these signatures imported a receipt. (*R. v. Hunter*, 2 *Leach*, 624; 2 *East*, *P. C.* 928; see *R. v. Barton*, 1 *Moo. C. C.* 141.) In like manner it was holden that an indictment for forging the word "*settled*" at the bottom of a bill must show by proper averments that it is a receipt. (*R. v. Thomson*, 2 *Leach*, 910; see *Reg. v. Boardman*, 2 *M. & Rob.* 147; *Arch. C. L.*, 15th ed., 53.)

In all cases, however, it is advisable to use the precise words of the statute, as it precludes all question as to the meaning of the expressions used. And, if the indictment describe the offence in the words of the statute, after verdict it will be sufficient in all offences created or subjected to any greater degree of punishment by any statute. (7 Geo. 4, c. 64, s. 21; see *R. v. Warshaner*, 1 *Moo. C. C.* 466.) Objections within this statute must be taken by demurrer; it is too late to take them on the trial. (*Reg. v. Law*, 2 *M. & Rob.* 297; and see *Nash v. The Queen*, 33 *L. J.*, *M. C.* 94.)

If there be any exception contained in the same clause of the Act which creates the offence, the indictment must show, negatively, that the defendant or the subject of the indictment does not come within the exception. (*Spiers v. Parker*, 1 *T. R.* 141; *R. v. Earnshaw*, 15 *East*, 456; *Rex v. Jarvis*, 1 *East*, 643; *R. v. Batten*, 6 *T. R.* 559; and see *R. v. Baxter*, 5 *T. R.* 83; *Leach*, 580; 2 *East*, *P. C.* 782; *R. v. Matters*, 1 *B. & Ald.* 362; *R. v. Pearce*, *R. & R.* 174; *R. v. Robinson*, *Id.* 321.) If, however, the exception or proviso be in a subsequent clause or statute (*R. v. Hull*, 1 *T. R.* 320), or, although in the same section, yet if

it be not incorporated with the enacting clause by any words of reference (*Steel v. Smith*, 1 B. & Ald. 94), it is in that case matter of defence for the other party, and need not be negatived in the pleading. (*Arch. C. L.*, 15th ed. 53, 54.)

By the 7 & 8 Geo. 4, c. 28, s. 14, it is enacted, that, whenever any statute relating to any offence, whether punishable upon indictment or summary conviction, in describing or referring to the offence, or the subject-matter on or with respect to which it shall be committed, hath used or shall use words importing the singular number or the masculine gender only, yet the statute shall be understood to include several matters, several persons, females and males, bodies corporate and individuals, unless it be otherwise specially provided, or there be something in the subject or context repugnant to such construction. No objection, therefore, can now be taken to any indictment, for that the matters alleged, or the persons described in it, do not correspond in number or gender with the description in the statute upon which the indictment is framed.

As to the conclusions of indictments on statutes, see *post*, p. 35.

#### 9. STATEMENT OF WRITTEN INSTRUMENTS.

When a written instrument forms a part of the gist of the offence, as in forgery or libel, before setting it forth it should be prefaced by the words, "*to the tenor following*," or, "*in these words*," or, "*as follows*," or, "*in the words and figures following*;" and, if, under such an allegation, the prosecutor fail in proving the instrument *verbatim*, as laid, the variance will be fatal (1 *Leach*, 78; 2 *Leach*, 660; 2 *East*, P. C. 976; 2 *Leach*, 597, 660), unless amended under the 14 & 15 Vict. c. 100, s. 1.

*Purport* means the substance of an instrument as it appears on the face of it to every eye that reads it: *tenor* means an exact copy of it. (2 *Leach*, 661.) The words "in manner and form following, that is to say," do not profess to give more than the substance, and are proper in an indictment for perjury (1 *Leach*, 192); but the word "aforesaid" binds the party to an exact recital. (*Ib.*; *Boyce v. Whitaker*, Dougl. 97.)

When written instruments form a part of the gist of the offence charged, they must be set out *verbatim*. Thus, in the case of forgery, the instrument forged must, before the 2 & 3 Will. 4, c. 123, s. 3, have been set out in the indictment in words or figures (*R. v. Gibbs*, 1 *East*, 180; *Leach*, 90, 172, 721); in an indictment for a libel, the libellous matter must be set out *verbatim* (see *Zenobio v. Artell*, 6 T. R. 162); for sending a threatening letter, the letter must be set out *verbatim* (2 *East*, P. C. 1123; and see *Leach*, 631); for not executing a warrant, the nature and tenor of the warrant must be shown *verbatim*. (*Burrough's case*, 1 Vent. 305; *Com. Dig. Indictment* (G 3).) So, in an indictment for not obeying the order of justices of the peace, the order must be set out *verbatim*.

In larceny of written instruments, made the subject of larceny by statute (see the 24 & 25 Vict. c. 96, s. 27), it is not necessary that the indictment should set them out *verbatim*; describing them in a general manner is sufficient. (2 *East*, P. C. 602, 777.) Thus, "one bank note for the payment of five pounds, and of the value of five pounds;" "one bill of exchange for the payment of fifty pounds, and of the value of fifty pounds;" or the like; for, where a specific thing is made the subject of larceny, it is necessary merely to describe it as such specific thing, it being a species of thing that is the subject of larceny. (*R. v. Johnson*, 3 M. & S. 539.) This rule applies to all instruments which are the subject of larceny, and by the 2 & 3 Will. 4, c. 123, s. 3, in an indictment for forging or uttering any instrument or writing, it was not necessary to set forth any copy or facsimile thereof, but it was sufficient to describe the instrument in such a manner as would sustain an indictment for stealing the same. (See *R. v. Warshaner*, 1 Moo. C. C. 466; 7 C. &

#### 8. Particular Requisites and Parts.

9. Written instruments, how to be stated.

8. *Particular Requisites and Parts.* *P.* 429; *R. v. Burgess*, 7 *C. & P.* 490; *R. v. James*, *Id.* 553; *Reg. v. Vaughan*, 8 *C. & P.* 276; *Reg. v. Sharpe*, *Id.* 436; *Reg. v. Rogers*, 9 *C. & P.* 41.) And now by the 24 & 25 *Vict. c. 98*, s. 42, in indictments for forging, altering, offering, uttering, disposing, or putting off any instrument, it is sufficient to describe it by any name by which it is usually known, or by the purport, without setting out a copy or describing it. And sect. 43 contains a similar provision with regard to engraving or making any instrument, or having any plate or for having any paper upon which any instrument may be engraved. And the 14 & 15 *Vict. c. 130*, s. 5, contains a similar provision as to stealing, embezzling, destroying, or concealing, or obtaining by false pretences, any instrument. And by the 14 & 15 *Vict. c. 100*, s. 7, "In all other cases wherever it shall be necessary to make any averment in any indictment as to any instrument, whether the same consists wholly or in part of writing, print, or figures, it shall be sufficient to describe such instrument by any name or designation by which the same may be usually known or by the purport thereof, without setting out any copy or facsimile of the whole or any part thereof. By sect. 24 no indictment shall be held insufficient for the omission of the words "as appears upon the record."

#### Variances.

Where the written instruments or parts of it are set out *verbatim*, the slightest variance between the indictment and evidence in this respect was at one time fatal. But the learning on the subject is now of very little importance owing to the powers of amendment given by the 14 & 15 *Vict. c. 100*, s. 1. (See tit. "*Amendment*," *Vol. I.*)

#### 10. STATEMENT OF CHATTELS, ANIMALS, NUMBER, AND VALUE.

##### 10. Statement of chattels, animals, etc. Description of goods.

Where *personal chattels* are the subject of an offence, as in larceny, they must be described specifically by the names usually appropriated to them, and the number and value of each species or particular kind of goods must be stated. (See 2 *Hale*, 182, 183.) An indictment, stating that defendant took and carried away a person's goods and chattels, without showing what, is bad. (*Ib.*) An indictment against a bankrupt for concealing his effects, stating part of the effects concealed to be "one hundred other articles of household furniture," and "a certain debt due from one A. B. to the said defendant, to the value of 20*l.* and upwards," was held bad. (*R. v. Forsyth*, *R. & R.* 274.) And in indictments on statutes, for offences relating to property, the property must be described, so as to agree with that stated in the statute.

##### Animals.

If an *animal* has the same appellation whether it be alive or dead, and it makes no difference as to the charge whether it were alive or dead, it may be called when dead by the appellation applicable to it when alive. (*R. v. Puckering*, 1 *Moo. C. C.* 242.) But, if one be indicted for stealing an animal, it will be intended to be a live animal, unless otherwise stated; and if it turn out to have been dead when stolen, and the offence and punishment for stealing it alive would be different, the prisoner must be acquitted (*R. v. Halloway*, 1 *C. & P.* 128; *R. v. Edwards*, *R. & R.* 497; *R. v. Williams*, 1 *Moo. C. C.* 110), unless the variance is amended under the 14 & 15 *Vict. c. 100*, s. 1. (See *post*, tit. "*Larceny*.")

##### Moneys.

*Money* was formerly described as so many pieces of the current gold or silver coin of the realm, called sovereigns, etc. (*R. v. Fry*, *R. & R.* 482.) But now, by the 14 & 15 *Vict. c. 100*, s. 18, "in every indictment in which it shall be necessary to make any averment as to any money or any note of the Bank of England or any other bank, it shall be sufficient to describe such money or bank note simply as money, without specifying any particular coin or bank note; and such allegation, so far as regards the description of the property, shall be sustained by proof of any amount of coin or of any bank note, although the particular species of coin of which such amount was composed or the particular nature of the bank note shall not be

proved, and, in cases of embezzlement and obtaining money or bank notes by false pretences, by proof that the offender embezzled or obtained any piece of coin or any bank note or any portion of the value thereof, although such piece of coin or bank note may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same or to any other person, and such part shall have been returned accordingly." This enactment does not justify an allegation in an indictment of the embezzlement of money, where a cheque only has been embezzled and there is no proof that it has ever been cashed. (*Reg. v. Keena, Law Rep.*, 1 C. C. R. 113; 37 L. J., M.C. 43.)

Where the property is of a nature to warrant that description, it should be termed "the goods and chattels," or should be averred to be "of the moneys," "of the cattle," &c., of the owner, when those terms apply. At all events, if these words be unnecessary, they might be rejected as surplusage; and it is best to insert them. (1 *Leach*, 468; *Reg. v. Radley*, 1 Den. C. C. 450.) The prosecutor is bound by the description stated, as, for instance, an indictment for stealing shoes cannot, unless amended, be supported by evidence of a larceny of boots.

Where the *number* or *quantity* of any property should be stated, it should be so done with certainty. An indictment stating that defendant stole "six handkerchiefs" is supported in evidence, though the handkerchiefs were in one piece, the pattern designating each handkerchief, and thus being described in the trade as so many handkerchiefs. (*R. v. Nibbs*, 1 Moo. C. C. 25; and see *post*, tit. "*Larceny*."). Ingots of tin, or a bar of iron, may be described as so many pounds weight of tin or iron; but, where an article has obtained, in common parlance, a particular name of its own, it would be wrong to describe it by the name of the material of which it is composed. (*Reg. v. Mansfield*, 1 C. & Mar. 140.)

Where the *value* is essential to constitute the offence, it must be stated. In general, it is not necessary to prove the precise value as stated, provided the value proved, when necessary to be stated, is sufficient to constitute the offence; and, although, to make a thing the subject of larceny, it must be of *some* value, and be so stated in the indictment, yet it need not be of the value of some coin known to the law, *i. e.* of a farthing at the least. (*Reg. v. Morris*, 9 C. & P. 349.) Where value to a particular amount is essential to constitute the offence, and the value is ascribed to many articles collectively, the offence must, unless the indictment is amended, be made out as to every one of those articles; for the grand jury has only ascribed that value to those articles *collectively*. (*R. v. Forsyth*, R. & R. 274.) The value must be of goods stolen at the same time (1 *Hale*, 531; 2 *East*, P. C., c. 16, s. 136); but, where a servant stole several articles at different times to the amount of £5, and subsequently carried them out of the house all together, it was held she could be convicted. (See *R. v. Jones*, 4 C. & P. 217; *Russ. on Cr.*, 6th ed., p. 86, n.) So also with respect to damaging and stealing trees (see *post*, tit. "*Larceny*"), if the aggregate value of several trees damaged or stolen at one time, or so nearly at one time as to form one continuous transaction, exceed the amount required, it is sufficient (*Reg. v. Shepherd, Law Rep.* 1 C. C. R. 118; 37 L. J., M. C. 45); but the damage done to the thing itself must be proved to be of the value required; mere consequential damage cannot be taken into account. (*Reg. v. Whiteman, Dears. C. C.* 353.)

By the 14 & 15 Vict. c. 100, s. 24, no indictment shall be held insufficient "for want of the statement of the value or price of any matter or thing, or the amount of damage, injury, or spoil, in any case where the value or price, or the amount of damage, injury, or spoil, is not of the essence of the offence."

# 11. STATEMENT OF TECHNICAL WORDS.

There are some technical words essential to the definition of the offence.  
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## 8. Particular Requisites and Parts.

In general.

Number and quantity.

Value.

Technical words.

### 8. *Particular Requisites and Parts.*

fence, without which the offence cannot be properly described in the indictment; and, if these are omitted, the defendant may demur, move in arrest of judgment, or bring a writ of error. Thus, in an indictment for murder, the word "*murdered*" (*Dy.* 261 *a*), and in an indictment for rape, the word "*ravished*" (*Staund.* 96 *a*), are absolutely necessary. See also other instances, 1 *Chit. C. L.* 242; and the titles "*Homicide*," "*Rape*," "*Burglary*," "*Riot*," "*Forcible Entry*," "*Larceny*," "*Piracy*," "*Treason*," etc., in this work.

"Force and arms."

The words "with force and arms," etc., though formerly usual in indictments for offences against the person, were not, it seems, absolutely essential. (See the 37 Hen. 8, c. 8; 1 *Chit. C. L.* 240-1; and see now the 7 Geo. 4, c. 64, s. 20, and the 14 & 15 Vict. c. 100, s. 24.)

"Wickedly."

The words "*wickedly, maliciously, of his own wicked and corrupt mind, being a person of evil disposition,*" etc., are, in general, mere matter of aggravation, and not material. (*R. v. Phillips*, 6 *East*, 472.) But, where an act must be done with a particular intent, in order to render it criminal, an evil intention must be averred upon the record (*ante*, p. 14); and, in such case, the intent must be proved as laid, or the variance will be fatal. (*Ante*, p. 15.) Every indictment for felony, whether at common law or by statute, must allege the act to be done "*feloniously*." (*Reg. v. Gray, L. & C.* 365.)

"Unlawfully."

The word "*unlawfully*," which is frequently used in the description of the offence, is unnecessary wherever the crime existed at common law, and is manifestly illegal. (2 *Hawk. c.* 25, s. 96; *Bac. Abr. Indictment* (G 1.) But, if a statute, in describing an offence which it creates, uses that word, the indictment founded on the statute will be bad if that word be omitted (2 *Hawk. c.* 25, s. 96; *Bac. Abr. Indictment* (G 1); *Cro. C. C.* 43; *ante*, p. 29); and it is in general best to insert it, especially as it precludes all legal cause of excuse for the crime. (*R. v. Burnet*, 4 *M. & S.* 274.)

"Knowingly."

The words "*knowingly*," or "*well knowing*," will supply the place of a positive averment that the defendant knew the facts subsequently stated. (*R. v. Lawley*, 2 *Str.* 904; *Com. Dig. Indictment*, (G 6); *R. v. Rushworth, R. & K.* 317; 1 *Stark*, 390, *S. C.*) A *scienter* is absolutely necessary, to constitute guilt, in indictments for uttering forged tokens, or other attempts to defraud, or for receiving stolen goods, and offences of a similar description; and in such cases it must be positively alleged. (*Id.*) If notice or knowledge be unnecessarily stated, the allegation may be rejected as surplusage. (*Williamson v. Allison*, 2 *East*, 452.)

## 12. CONCLUSION OF INDICTMENT AT COMMON LAW.

12. Conclusion of indictment at common law.

In general.

In general, in the conclusion of the indictment, or of each count, there were several sentences in common use, which do not seem to be at all material. Of this description are "*to the great damage of the party*" particularly injured by the offence, "*to the evil example of all others*," and "*to the great displeasure of Almighty God*." And, though it is usual to conclude an indictment for treason "*contrary to defendant's allegiance*," yet it will suffice if that allegation be in the body of the indictment. But the words, "*to the common nuisance of all the liege subjects of our lady the Queen*," seem, according to the better opinion, to be necessary to all indictments for common nuisances, and against scolds and barretors. The words, "*in contempt of our said lady the Queen and her laws*," are frequently used in indictments in superior Courts, in informations of obtrusion, and in actions upon statutes; but they seem unnecessary. (See 1 *Chit. C. L.* 245, and the authorities there cited.)

Against the statute, etc.

*Against the Statute, etc.*—If an indictment conclude "*contrary to the form of the statute in such case made and provided*," when the crime is indictable at common law, the conclusion may be rejected, and

the proceedings supported. (*R. v. Horne, Cowp.* 683; *R. v. Mathews*, 5 *T. R. Leach*, 585; *R. v. Uryln*, 2 *Saund.* 308, etc.)

10. *Mode of Engrossing, etc.*

*Against the Peace of our lady the Queen, etc.*—These words were formerly essential (2 *Hale*, 188); but now, by the 14 & 15 Vict. c. 100, s. 24, the omission of the words “against the peace,” etc., constitutes no objection to an indictment, nor does the “want of a proper or formal conclusion.”

Against the peace, etc.

### 13. CONCLUSION OF INDICTMENT FOR AN OFFENCE AGAINST A STATUTE.

An indictment for an offence created by statute concludes thus:—*“Against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.”*

13. Conclusion of indictment for an offence against a statute.

By the 14 & 15 Vict. c. 100, s. 24, no indictment shall be held insufficient for the insertion of the words “*Against the form of the statute*” instead of “*Against the form of the statutes*,” or *vice versa*, nor for the want of a proper or formal conclusion.

## IX. Defects in Indictments, how taken Advantage of, or cured.

We have already, in pointing out the general requisites and particular parts of indictments, shown how omissions or defects therein may be taken advantage of; and under this head all that remains to be considered is the 14 & 15 Vict. c. 100, which, after enacting by sect. 24 that no indictment shall be held insufficient on account of certain defects in that section mentioned, goes on to enact further by sect. 25, that every objection to any indictment for any formal defect apparent on the face thereof shall be taken by demurrer or motion to quash the indictment, before the jury shall be sworn, and not afterwards; and the section then gives power to the court to amend.

Defects in, how available, etc.

## X. Mode of Engrossing, etc., Names of Witnesses.

By the 4 Geo. 2, c. 26, and the 6 Geo. 2, c. 14, all indictments, informations, inquisitions, and presentments shall be in *English*, and be written in a common legible hand, and not court hand, on pain of £50 to him that shall sue in three months. They should be engrossed on plain parchment without a stamp. No part of the indictment must contain any abbreviation, or express any number or date by figures; but these, as well as every other term used, must be expressed in words at length. (2 *Hale*, 170.) The only exception is in cases of libel, and sending threatening letters, where a *fac simile* of the written instrument must be set out. (*R. v. Mason*, 1 *East*, 180; *ante*, p. 31.)

Mode of engrossing, etc.; must be in English, etc.

In most cases, upon furnishing the clerk of the arraigns or clerk of the indictments at the assizes, or the clerk of the peace at sessions, with instructions as to the offence, he will draw the indictment; in difficult cases, however, it is best to get it drawn by counsel or special pleader.

Who to draw.

The names of the witnesses who are to support the bill of indictment before the grand jury should be endorsed on the back of the bill. The witnesses should afterwards go before the grand jury when required: See the 19 & 20 Vict. c. 54, ss. 1, 2, 3, by which the witnesses are to be sworn by the foreman before the grand jury; but it seems that an improper mode of administering the oath will not vitiate the indictment. (*R. v. Russel*, 1 *C. & M.* 247.)

Names, etc., of witnesses.

There is no objection to the examination of witnesses at the trial who



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of Grand  
Jury.*

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were not sent before the grand jury; but in cases of felony, where the prosecutor does not think proper to examine any witness whose name appears on the back of the bill, the Court will usually, at the desire of the prisoner, require such witness to be placed in the box as the witness of the Crown, in order that the prisoner may have the benefit of questioning him by way of cross-examination. In misdemeanours this practice does not prevail. But this is not of course, even in felony, so as to entitle the prisoner to call on the prosecutor's counsel to do so. (*R. v. Vincent*, 9 C. & P. 91.)

If counsel for the prosecution call a witness whose name is on the back of the indictment, but do not examine him, and such witness be examined by the prisoner's counsel, any question put by the prosecutor's counsel after this must be considered as a re-examination, and, therefore, the prosecutor's counsel cannot ask anything that does not arise out of the previous examination by the prisoner's counsel. (*R. v. Beezley*, 4 C. & P. 220.)

### XI. Presentment to, and Finding of Bill before, Grand Jury.

The indictment being ready, properly engrossed, the proper officer will prefer it before the grand jury (a). Two indictments for the same offence, one for the *felony* under a statute, and the other for the *misdemeanour* at common law, ought not to be preferred or found at the same time. (*R. v. Doran*, 1 Leach, 538; *R. v. Smith*, 3 C. & P. 413.) But the Court of Queen's Bench will not quash them in such a case. (*Reg. v. Stockley*, 3 Q. B. 238; 2 G. & D. 728.) When the bill is preferred, the witnesses for the charge are called in and examined by the grand jury, or, by the grand jury's consent, by the prosecutor or his solicitor. It seems the defendant has no right to have a counsel or attorney, or any person skilled in the law, present as an advocate on his behalf, it being a preliminary investigation only, and not conclusive on him. (*Cox v. Coleridge*, 1 B. & C. 37, 51; 2 D. & R. 86, S. C. And see *R. v. Borron*, 3 B. & Ald. 432; 1 Chit. R. 217; *Daubney v. Cooper*, 10 B. & C. 237; *Collier v. Hicks*, 2 B. & Adol. 663.) Any person who may be present on the occasion is bound not to disclose what may transpire. (*Trials per Pais*, 387; 2 Hawk. c. 46, s. 93.) And the jurors themselves are, by the terms of their oath, laid under the same obligation; and, if they transgress it, they are finable. (2 Hule, 161.) The grand jury should require the same evidence, written and parol, as may be necessary to support the indictment at the trial. They are not, however, usually very strict as to documentary evidence; they often admit copies where the originals alone are evidence; and sometimes even evidence by parol of a matter which should be proved by written evidence. But, as they may insist on the same strictness of proof as must be observed at the trial, it may be prudent in all cases to be provided, at the time the bill is preferred, with the same evidence which is intended afterwards to support the indictment. (*Arch. C. L.*, 15th ed. 66.) As to the degree and nature of proof required in general, and the competency of witnesses, see tit. "*Evidence*," Vol. II.

An indictment may be found upon the oath of one witness only, unless it be for high treason, which requires two witnesses, and unless, in any instance, it be otherwise specially directed by Act of Parliament. (2 Hawk. c. 25, s. 129.) See tit. "*Evidence*," Vol. II.

If the grand jury find the bill upon incompetent or improper evidence, yet, if the prisoner be afterwards tried on legal and sufficient testimony, it seems that the conviction cannot be shaken. (2 Hawk. c.

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(a) As to the Grand Jury, and Jurors in General, see *post*, tit. "*Jurors*."

25, s. 145; 1 *Leach*, 156.) The witnesses should be examined on oath. (2 *Hawk.* c. 25, s. 138; *R. v. Dickinson*, *R. & R.* 401.) And see the 19 & 20 Vict. c. 54. Lord Hale (2 *Hale*, 157) says, that the grand jury, at the assizes or sessions, ought only to hear the evidence for the Queen, and, in case there be probable evidence, they ought to find the bill, because it is but an accusation, and the party is to be put on his trial afterwards. Which doctrine is also laid down by C. J. *Pemberton*, in the case of the *Earl of Shaftesbury*. (8 *Howell's St. Tr.* 770.) But the learned editor of *Hale's History* observes upon this, that *Sir John Hawkins*, in his remarks on the said case, unanswerably shows that a grand jury ought to have the same persuasion of the truth of the indictment as a petty jury, or a coroner's inquest; for they are sworn to present the truth, and nothing but the truth. (*Vide* 8 *Howell's St. Tr.* 837.) And Lord *Coke* says that, seeing indictments are the foundation of all, and they are commonly found in the absence of the party accused, it is necessary there should be substantial proof. (3 *Inst.* 25.) A person in Court may, it seems, on a criminal prosecution, be compelled to answer a question, though not subpoenaed. (*R. v. Sadler*, 4 C. & P. 218.) If witnesses will not come forward voluntarily to give evidence before the grand jury, they may be compelled to do so by a *subpœna* or *subpœna duces tecum*, sued out either at the Crown Office in London, or with the clerk of the arraigns in the country, for the assizes; or at the Crown Office, or with the clerk of the peace, for the sessions; and each of them should be served with a copy, or *subpœna* ticket, as it is termed. Or, if the witness be in prison, he may be brought up by *habeas corpus ad testificandum*. (See 1 *Chit. C. L.* 320-1; and as to the consequences of disobedience of *subpœna*, *Ib.*, and tit. "*Evidence*," Vol. II.)

# 11. Finding of Grand Jury.

After the evidence has been gone into, if a majority (at least twelve) of the grand jury consider the charge sufficiently proved, the clerk of the grand jury will indorse on the indictment "a true bill;" but, if they consider otherwise, he will indorse on it "no true bill," or, "not found." It seems to be generally agreed, that the grand jury may not find *part* of an indictment to be true, and part false; but must either find a true bill, or *ignoramus* for the whole; and, if they take upon them to find it *specialy*, or *conditionally*, or to be true for *part* only, and not for the rest, the whole is void, and the party cannot be tried upon it, but ought to be indicted anew. (2 *Hawk.* c. 25, s. 2.) But, where there are two counts in the indictment, as one for a riot, and another for an assault, it may be considered as two distinct indictments; and the jury may affirm the bill as to one of the counts, and reject it as to the other. (*R. v. Fieldhouse*, 1 *Cowp.* 325.) And, where a bill is presented for murder, the grand jury may find a true bill for manslaughter only. (*Per Garrow*, B., at *Staff. Sum. Ass.* 1822; *R. v. Caulkin*, *MS.*, 3 *Burn's J.*, 24th edit. And see further, 1 *Chit. C. L.* 322.) After the bill has been found, the foreman of the grand jury, accompanied by the other grand jurors, carries the indictment into Court, and delivers it with the rest of the indictments preferred before them to the clerk of the arraigns, or clerk of the peace, who thereupon states to the Court the substance of each, and the indorsement upon it. In all cases, to give the grand jury jurisdiction, and render their proceedings valid, they must be all duly qualified and sworn, etc. (See, as to this, *post*, tit. "*Jurors (Grand)*.")

Finding of.

If the bill be not found, or, if the indictment be defective, a new and more regular one may be framed, and sent to the same or another grand jury for their finding. (4 *Bla. Com.* 305; *Bac. Ab. Indictment* (D 2).) And thus, after the finding of a bill for murder, when the facts amount to petit treason, the Crown may procure the indictment to be quashed, and prefer another for the petit treason. (*Fost.* 104, 106.) The mere insufficiency, therefore, of the finding affords no future indemnity to the party indicted. (1 *Chit. C. L.* 325.) Although the grand jury have been

Preferring a fresh indictment.

12. *Quashing an Indictment.* formally discharged, yet, if they have not left the precincts of the Court, nor separated, they may be recalled and charged with other bills. (*Reg. v. Holloway*, 9 C. & P. 43.)

## XII. Quashing an Indictment.

When indictment may be quashed.

When the indictment or the caption is defective, the Court have a discretionary power to quash it immediately, or to oblige the defendant to plead or demur, which rests entirely with the Court. (*R. v. Wheatly*, 2 Burr. 1127; 2 Hawk. c. 25, s. 146; 4 Burr. 2539.) They exercised this power in a case where an indictment for forgery was found at the quarter sessions. (*R. v. Rigby*, 8 C. & P. 770.) The defect must be plainly obvious on the face of the indictment to induce the Court to interfere. They will not do so where there is a particle of doubt. (See *R. v. Burnby*, 13 L. J., M. C. 29.)

On application of prosecutor.

When the application is made by the *prosecutor*, the Court will not quash the indictment as a matter of course, unless it appear to be clearly insufficient (*R. v. Stratton*, Dougl. 240); nor even then, after the defendant has pleaded, unless another good indictment has been found against him (*R. v. Wynn*, 2 East, 226; 1 Leach, 11; *Goddard v. Smith*, 6 Mod. 262); nor, where he has been put to extra expense, unless the costs are first paid him. (*R. v. Webb*, 3 Burr. 1469; *R. v. Moore*, 2 Stra. 946; 2 Kely. 103, S. C.; *Reg. v. Dunn*, 1 C. & K. 730.) But, where the indictment is insufficient, and the defendant is not put to inconvenience, the Court will quash it upon the motion of the prosecutor, without the consent of the defendant, though it is for a crime in which they never show the same indulgence upon the application of a prisoner. (2 Sess. Cas. 19; *R. v. Wynn*, 2 East, 226, 227.) After judgment in demurrer an indictment cannot be quashed at the instance of the prosecutor. (*Reg. v. Smith*, 2 M. & Rob. 109.)

On application of defendant.

When the application is made on the part of the *defendant*, the rules by which the Court are guided are more strict, and their objections are more numerous, because, if the indictment be quashed, the recognizances will become ineffectual (2 Sess. Cas. 1); and the Courts usually refuse to quash on the application of the defendant when the indictment is for a serious offence, unless upon the clearest and plainest ground, but will drive the party to a demurrer or motion in arrest of judgment or writ of error. (*Cald.* 432, 554; *Nolan*, P. L. 261; 1 Chit. C. L. 300.) And, where two indictments against the same defendant, the one for misdemeanour, the other for felony, had been removed into the Court of Queen's Bench, the Court refused to quash them upon an affidavit stating that they both related to the same transaction. (*Reg. v. Stockley*, 2 Gale & D. 728; 3 Q. B. 238.)

The application to quash an indictment is made to the Court where the bill is found, except in cases of indictments at sessions, or in other inferior courts, in which cases the application is made to the Court of Queen's Bench, the record being previously removed there by *certiorari*. But it is now settled that the Court of Quarter Sessions has authority to quash an indictment before plea pleaded. (*Reg. v. Wilson*, 6 Q. B. 620.) The application, if made upon the part of the defendant, must be made before plea pleaded (*Fost.* 231; *Holt*, 684; 4 St. Tr. 677; see the 14 & 15 Vict. c. 100, s. 25); and, where the indictment had already, upon the application of the defendant, been removed into the Court of Queen's Bench by *certiorari*, the Court refused to entertain a motion by the defendant to quash the indictment, after a forfeiture of his recognizance by not having carried the record down for trial. (*Anon.*, 1 Salk. 380.) But, if the application be made upon the part of the prosecution, it would seem that it may be made at any time before the defendant has been actually tried upon the indictment. (See *R. v. Webb*, 3 Burr. 1468.)

Where the application is made to the Court of Queen's Bench, there is no objection to its being moved on the last day of the term. (*Anon.*, 1 *Burr.* 651.) A rule to quash an indictment for informality at the instance of the prosecutor is absolute in the first instance, although the defendant has removed it by *certiorari* into the Queen's Bench, and has not yet appeared and pleaded. (*Reg. v. Stowell*, 1 *Dowl. N. S.* 320.)

14. *Granting Copy of Indictment.*

After the indictment against the defendant has been quashed, a new and more regular one may be preferred against him. (2 *Wooddes.* 555; 3 *P. Wms.* 480, 499.) He can gain, therefore, in general, very little advantage, except delay, by such an application, and, therefore, usually reserves his objections till after the verdict, when, if the indictment be found to be insufficient, the Court are bound, *ex debito justitiæ*, to arrest the judgment. (*R. v. Wheatley*, 2 *Burr.* 1127; 1 *Chit. C. L.* 303.) A person who has pleaded to an indictment which was invalid, on account of its having been found upon the testimony of witnesses not duly sworn to give evidence, may be required to plead to another indictment for the same offence, without the first indictment being quashed by the Court. (*Rex v. Chamberlain*, 6 *C. & P.* 97.)

Fresh indictment.

A jury sworn on an indictment clearly bad in point of law may, it seems, be discharged by the judge from giving a verdict. (*R. v. Deacon*, *R. & M.* 27. See *R. v. Souter*, 2 *Stark. C. N. P.* 423.)

Jury may be discharged from giving verdict on bad indictment.

### XIII. Amendment of Indictment.

As to this, see tit. "Amendment," Vol. I.

Amendment.

### XIV. Granting Copy of Indictment.

At common law, the defendant is not, in case of treason or felony, entitled to a copy of the indictment (*Sir A. Vane's case*, 1 *Lev.* 68; 2 *Hale*, 236; *R. v. Holland*, 4 *T. R.* 692, 693; 2 *Hawk. c.* 39, s. 13; *sed vide R. v. Brangan*, 1 *Leach*, 27; *Browne v. Cumming*, 10 *B. & C.* 70 (a)); though, if any legal exception be taken to its form, the Court will, as a favour, allow a copy to be taken of the part which it is material to examine. (2 *Hawk. c.* 29, s. 13.) And he is, in all cases, allowed to have the record read over to him with sufficient distinctness, or even twice in English (*Id.*); as is the case at the present day, where the prisoner desires to plead *autrefois acquit* to an indictment for felony. (*Re Vandercom*, 2 *Leach*, 711; 2 *East, P. C.* 519.) But it has since been held that, where a party has been tried at a court of quarter sessions, which has previously lapsed for want of due adjournment, he has a right to have a record of the proceedings made up by the clerk of the peace, although the object of the application is to enable him to support a plea of *autrefois convict*. (*Rex v. Middlesex* (Justices), 3 *Nev. & M.* 110; 5 *B. & Ad.* 1113.) And this case appears to overrule *Vandercom's case*, and seems to establish the right to a copy of the indictment for the purpose of pleading *autrefois acquit or convict*; but, where a copy of the record of acquittal is asked for, in order to found upon it an action for malicious prosecution, it is still open to a doubt whether such copy would be granted as matter of right. (See *Russ. on Cr. Vol. III.* p. 349, n. (a), 4th ed., by Greaves.)

Granting copy of, in general.

In cases of high treason, the prisoner is now, by virtue of the 7 Anne, c. 21, entitled to have a copy of the indictment, with a list of the witnesses and jurors, delivered to him ten days before the trial, in the presence of two witnesses. But this privilege, by the 6 Geo. 3, c. 53, does not extend to offences respecting the coin; for otherwise it would be

In treason.

15. *Other Proceedings as to Indictments.*

impossible to try that offence during the same assizes in which it was indicted, as ten clear days between the finding and the trial of the indictment would exceed the time usually allotted for a session of oyer and terminer.

In misdemeanours.

In offences *inferior to felony*, on the other hand, it seems that the right of having a copy of the indictment has at all times been admitted. (*Lady Fulwood's case*, *Cro. Car.* 483; *Morrison v. Kelly*, 1 *W. Bl.* 385; *Evans v. Phillips*, *Selw. N. P.* 952; see *Browne v. Cumming*, 5 *M. & Ry.* 118; 10 *B. & Cres.* 70, *S. C.*) And now, by the 60 Geo. 3 & 1 Geo. 4, c. 4, s. 8, in prosecutions for misdemeanours, instituted by the Attorney or Solicitor-General, in any of the Courts therein mentioned, the Court shall, if required, make order that a copy of the information or indictment shall be delivered, after appearance, to the party prosecuted, or his clerk in Court, or attorney, upon application made for the same, free from all expense to the party so applying; provided that such party, or his clerk in Court, or attorney, shall not have previously received a copy thereof.

Where *postea*, etc., lost.

On an indictment on the prosecution of a private individual for keeping a common gaming-house, the solicitor of the Treasury was allowed to have a new record of *Nisi Prius* engrossed, and the *postea* and verdict indorsed from the judge's notes, on an affidavit that the *postea* could not be found, and that the solicitor of the Treasury was instructed by the Secretary of State to call for the judgment of the Court. (*R. v. Oldfield*, 3 *B. & Adol.* 659, n.)

Office certificate of finding of bill for purpose of obtaining a judge's warrant.

The prosecutor of an indictment for misdemeanour may obtain the usual Crown Office certificate of his bill having been found, for the purpose of taking out a judge's warrant against the defendant, without obtaining an office copy of the indictment. (*R. v. Redfern*, 2 *Ad. & E.* 387; 4 *Nev. & M.* 198, *S. C.*)

List of witnesses on back of indictment and addresses of.

Where an indictment for a conspiracy had been found against a defendant, the Court refused to grant such defendant a rule to show cause why the prosecutor and his attorney should not furnish him with a list of the names and addresses of the witnesses on the back of the indictment, even though it was sworn by the defendant that he believed such witnesses were procured and suborned for the purpose of the prosecution. (*Reg. v. Gordon*, 2 *Dowl., N. S.*, 417.)

## XV. Other Proceedings as to Indictments.

As to the process to compel the defendants to answer it, see tit. "*Process*," *post*, and tit. "*Warrant*," *Vol. V.*

As to the removal of indictments into other courts or counties, see tit. "*Certiorari*," *Vol. I.*

As to the appearance and arraignment of defendant, see tit. "*Appearance*," "*Arraignment*," *Vol. I.*

As to the pleas and pleadings relative to the indictments: for pleas, etc., in abatement, see tit. "*Abatement*," *Vol. I.*; and for pleas, etc., in bar, see tit. "*Pleas*," *post*; and tit. "*Autrefois Acquit*," "*Autrefois Attaint*," "*Autrefois Convict*," *Vol. I.*; and tit. "*Pardon*," *post*.

As to demurrers, see tit. "*Demurrer*," *Vol. I.*

As to the trial and preliminary proceedings, see tit. "*Trial*," *Vol. V.*

As to the jury, see *post*, tit. "*Jurors*."

As to the evidence, see tit. "*Evidence*," *Vol. II.*

As to judgment and proceedings, see *post*, tit. "*Judgment*;" and the different titles of punishments.

As to costs, see tit. "*Costs*," *Vol. I.*

XVI. *Forms.*16. *Forms.*

See the form, tit. "*Evidence*," Vol. II.

See the form, tit. "*Evidence*," Vol. II.

See the form, tit. "*Recognizance*," Vol. V.

*Kent.* [The Venue.]—*The jurors for our lady the Queen upon their oath present, that C. D., on the — day of —, in the — year of the reign of our lady the now Queen Victoria, [here state the offence, etc.]*

*Central Criminal Court.*—*The jurors, etc. [proceed as in other indictments, but add, "and within the jurisdiction of the said Court," or, if another Court be alleged in the indictment, "and within the jurisdiction of the said Central Criminal Court."]*

*Venue.* [County where offence is tried.]—*The jurors for our sovereign lady the Queen upon their oath present, that C. D., on the — day of —, in the — year of the reign of our lady the now Queen Victoria, upon the high seas, in and on board of a certain ship called the [Adventure galley] (whereof the said C. D. was then and there commander), then and there being, feloniously, wilfully, and of his malice aforethought, did, etc. [state the offence.]*

*And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. D., on the day and year aforesaid [here state the offence.]*

*Against the peace of our lady the Queen, her crown and dignity.*

*In contempt of our said lady the Queen and her laws, to the evil example of all others, contrary to the duty of the allegiance of the said C. D., against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity.*

*Against the form of the statute [or, "statutes"] in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity.*

(1.) Condition of a recognizance to prefer a bill of indictment.

(2.) The like of a recognizance to give evidence.

(3.) Condition of a recognizance to answer to an indictment.

(4.) Commencement of an indictment at the assizes or general quarter sessions.

(5.) The like of an indictment in the Central Criminal Court.

(6.) Indictment for an offence within the Admiralty jurisdiction.

(7.) Commencement of a second or subsequent count.

(8.) Common conclusion of an indictment, or second count, at common law.

(9.) Conclusion of indictment or count for treason.

(10.) Common conclusion of indictment, or second count, on a statute.

## Industrial Schools.

I. *Extent and Interpretation of Act*, p. 42.

II. *What are Industrial Schools*, p. 42.

III. *Of the Inspector*, p. 42.

IV. *Certified Industrial Schools*, p. 43.

V. *Classes of children to be detained in Certified Industrial Schools*, p. 44.

VI. *Order of detention*, p. 45.

VII. *Management of Schools*, p. 46.

VIII. *Offences at Schools, etc.*, p. 47.

3. *Inspector.*IX. *Expenses of Children in Schools*, p. 48.X. *Discharge, etc., of Children from School*, p. 50.XI. *Withdrawal, etc., of Certificate of School*, p. 50.XII. *Expenses of prison authorities, etc.*, p. 51.XIII. *Miscellaneous*, p. 51.XIV. *Forms*, p. 51.I. *Extent and Interpretation of Act.*

Industrial Schools are regulated by the 29 & 30 Vict. c. 98, which, by s. 1, may be cited as "The Industrial Schools Act, 1866."

## Extent of Act.

2. This Act shall not extend to Ireland.

## Interpretation of terms.

3. [Acts described in first schedule repealed.]

4. In this Act—

The term "Justice" applies to England only, and means a justice of the peace having jurisdiction in the place where the matter requiring the cognizance of a justice arises:

The term "two Justices" applies to England only, and means two or more justices in petty sessions, or the lord mayor or an alderman of the city of London, or a police or stipendiary magistrate, or other justice having by law authority to act alone for any purpose with the powers of two justices:

The term "Magistrate" applies to Scotland only, and includes sheriff, sheriff substitute, justice of the peace of a county, judge in a police court, and provost or baillie of a city or burgh:

28 &amp; 29 Vict. c. 126.

The term "Prison Authority" with respect to England has the same meaning as in "The Prisons Act, 1865," and with respect to Scotland means the administrators of a prison as defined by "The Prisons (Scotland) Administration Act, 1860:"

23 &amp; 24 Vict. c. 105.

The term "Parish" includes a place separately maintaining its own poor.

II. *Industrial Schools.*

## Description of industrial schools and managers.

5. A school in which industrial training is provided, and in which children are lodged, clothed, and fed, as well as taught, shall exclusively be deemed an industrial school within the meaning of this Act.

The persons for the time being having the management or control of such a school shall be deemed the managers thereof for the purposes of this Act.

III. *Inspector.*

## Inspector of industrial schools and assistant.

6. Such one of her Majesty's inspectors of prisons as one of her Majesty's principal Secretaries of State (in this Act referred to as the Secretary of State) from time to time thinks fit to appoint to be the inspector of reformatory schools shall be also the inspector of industrial schools.

The Secretary of State may from time to time appoint a fit person to assist the inspector; and every person so appointed shall have such of the powers and duties of the inspector of industrial schools as the Secretary of State from time to time prescribes, but shall act under the direction of the inspector.

## IV. Certified Industrial Schools.

4. *Certified Industrial Schools.*

7. The Secretary of State may, on the application of the managers of an industrial school, direct the inspector of industrial schools to examine into the condition of the school, and its fitness for the reception of children to be sent there under this Act, and to report to him thereon, and the inspector shall examine and report accordingly.

Mode of certifying industrial school.

If satisfied with the report of the inspector, the Secretary of State may, by writing under his hand, certify that the school is fit for the reception of children to be sent there under this Act, and thereupon the school shall be deemed a certified industrial school.

8. A school shall not be at the same time a certified industrial school under this Act and a certified reformatory school under any other Act.

School not to be certified as industrial and reformatory. Notices of certificate to be gazetted.

9. A notice of the grant of each certificate shall within one month be inserted, by order of the Secretary of State, in the London or in the Edinburgh Gazette, according as the school to which it refers is in England or in Scotland.

Copy of Gazette to be evidence.

A copy of the Gazette containing the notice shall be conclusive evidence of the grant, which may also be proved by the certificate itself, or by an instrument purporting to be a copy of the certificate, and to be attested as such by the inspector of industrial schools.

10. Every certified industrial school shall from time to time, and at least once in each year, be inspected by the inspector of industrial schools, or by a person appointed to assist him as aforesaid.

Inspection of school.

11. No substantial addition or alteration shall be made to or in the buildings of any certified industrial school without the approval in writing of the Secretary of State.

Alterations, etc., of buildings to be approved.

12. In England a prison authority may from time to time contribute such sums of money, and on such conditions as they think fit, towards the alteration, enlargement, or rebuilding of a certified industrial school,—or towards the support of the inmates of such a school,—or towards the management of such a school,—or towards the establishment or building of a school intended to be a certified industrial school,—or towards the purchase of land required either for the use of an existing certified industrial school, or for the site of a school intended to be a certified industrial school; provided,—

Contribution by counties and boroughs to establishment and enlargement of schools.

First, that not less than two months' previous notice of the intention of the prison authority to take into consideration the making of such contribution, at a time and place to be mentioned in such notice, be given by advertisement in some one or more public newspaper or newspapers circulated within the district of the county or borough, and also in the manner in which notices relating to business to be transacted by the prison authority are usually given :

Secondly, that, where the prison authority is the council of a borough, the order for the contribution be made at a special meeting of the council :

Thirdly, that, where the contribution is for alteration, enlargement, rebuilding, establishment, or building of a school or intended school, or for purchase of land, the approval of the Secretary of State be previously given for that alteration, enlargement, rebuilding, establishment, building, or purchase.

In Scotland a county board may contribute to any certified industrial school with the consent and in the manner provided by "The Prisons (Scotland) Administration Act, 1860," respecting contributions to reformatories.

13. In order to obtain the approval of the Secretary of State as aforesaid where required, the managers of the school, or promoters of the intended school, shall forward to the Secretary of State particulars of the

Mode of obtaining approval of Secretary of State.



*5. Classes of Children to be detained.*

proposed establishment or purchase, and a plan of the proposed alteration, enlargement, rebuilding or building, drawn on such scale, and accompanied by such particulars and estimate of cost, as the Secretary of State thinks fit to require; and the Secretary of State may approve of the particulars and plan submitted to him, with or without modification, or may disapprove of the same, and his approval or disapproval shall be certified by writing under his hand.

**V. Classes of Children to be detained in Certified Industrial Schools.**

As to children under fourteen years of age found begging, etc.

14. Any person may bring before two justices or a magistrate any child apparently under the age of fourteen years that comes within any of the following descriptions, namely,—

That is found begging or receiving alms (whether actually or under the pretext of selling or offering for sale anything), or being in any street or public place for the purpose of so begging or receiving alms;

That is found wandering and not having any home or settled place of abode, or proper guardianship, or visible means of subsistence;

That is found destitute, either being an orphan or having a surviving parent who is undergoing penal servitude or imprisonment;

That frequents the company of reputed thieves.

The justices or magistrate before whom a child is brought, as coming within one of those descriptions, if satisfied on inquiry of that fact, and that it is expedient to deal with him under this Act, may order him to be sent to a certified industrial school.

As to children under twelve years of age charged with offences.

15. Where a child, apparently under the age of twelve years, is charged before two justices or a magistrate with an offence punishable by imprisonment or a less punishment, but has not been in England convicted of felony, or in Scotland of theft, and the child ought, in the opinion of the justices or magistrate (regard being had to his age and to the circumstances of the case), to be dealt with under this Act, the justices or magistrate may order him to be sent to a certified industrial school.

As to refractory children under fourteen years of age in charge of parents, etc.

16. Where the parent or step-parent or guardian of a child, apparently under the age of fourteen years, represents to two justices or a magistrate that he is unable to control the child, and that he desires that the child be sent to an industrial school under this Act, the justices or magistrate, if satisfied on inquiry that it is expedient to deal with the child under this Act, may order him to be sent to a certified industrial school.

As to refractory children under fourteen years of age in work-houses, pauper schools, etc.

17. Where the guardians of the poor of a union or of a parish wherein relief is administered by a board of guardians, or the board of management of a district pauper school, or the parochial board of a parish or combination, represent to two justices or a magistrate that any child, apparently under the age of fourteen years, maintained in a workhouse or pauper school of a union or parish, or in a district pauper school, or in the poorhouse of a parish or combination, is refractory, or is the child of parents either of whom has been convicted of a crime or offence punishable with penal servitude or imprisonment, and that it is desirable that he be sent to an industrial school under this Act, the justices or magistrate may, if satisfied that it is expedient to deal with the child under this Act, order him to be sent to a certified industrial school.

## VI. Order of Detention.

*6. Order of Detention.*

18. The order of justices or a magistrate sending a child to a school (in this Act referred to as the order of detention in a school) shall be in writing, signed by the justices or magistrate, and shall specify the name of the school.

Form and contents of order sending child to school.

The school shall be some certified industrial school (whether situate within the jurisdiction of the justices or magistrate making the order or not), the managers of which are willing to receive the child; and the reception of the child by the managers of the school shall be deemed to be an undertaking by them to teach, train, clothe, lodge, and feed him during the whole period for which he is liable to be detained in the school, or until the withdrawal or resignation of the certificate of the school takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

The school named in the order shall be presumed to be a certified industrial school until the contrary is shown.

In determining on the school the justices or magistrate shall endeavour to ascertain the religious persuasion to which the child belongs, and shall, if possible, select a school conducted in accordance with such religious persuasion, and the order shall specify such religious persuasion.

The order shall specify the time for which the child is to be detained in the school, being such time as to the justices or magistrate seems proper for the teaching and training of the child, but not in any case extending beyond the time when the child will attain the age of sixteen years.

19. Two justices or a magistrate, while inquiry is being made respecting a child or respecting a school to which he may be sent, may, by order signed by them or him, order the child to be taken to the workhouse or poorhouse of the union, parish, or combination in which he is found or resident, or where (in Scotland) there is no such poorhouse, or the poorhouse is at an inconvenient distance, to such other place, not being a prison, as the magistrate thinks fit, the occupier whereof is willing to receive him, and to be detained therein, at the cost of the union, parish, or combination, for any time not exceeding seven days, or until an order is sooner made for his discharge, or for his being sent to a certified industrial school; and the guardians of the poor for the union or parish, or the keeper of the poorhouse, or other person to whom the order is addressed, are and is hereby empowered and required to detain him accordingly.

Temporary detention in workhouse, etc.

20. If the parent, step-parent, or guardian, or, if there be no parent, step-parent, or guardian, then the god-parent or nearest adult relative, of a child sent or about to be sent to a certified industrial school which is not conducted in accordance with the religious persuasion to which the child belongs, states to the justices or magistrate by whom the order of detention has been or is about to be made (or to two justices or a magistrate having the like jurisdiction) that he objects to the child being sent to or detained in the school specified or about to be specified in the order, and names another certified industrial school in Great Britain, which is conducted in accordance with the religious persuasion to which the child belongs, and signifies his desire that the child be sent thereto, then, and in every such case, the justices or magistrate shall, upon proof of such child's religious persuasion, comply with the request of the applicant, provided,—

Power to parent, etc., to apply to remove child to a school conducted in accordance with child's religious persuasion.

First, that the application be made before the child has been sent to a certified industrial school, or within thirty days after his arrival at such a school:

Secondly, that the applicant show to the satisfaction of the justices or

7. *Management of School.*

magistrate that the managers of the school named by him are willing to receive the child :

Provided always, with respect to Scotland, that, if any child who has become chargeable to any parish, and who is, under this section, sent from Scotland to a school out of Scotland, might have been removed from Scotland (under any Act for the time being in force relating to the relief of the poor in Scotland) at the instance of the inspector of the poor of the parish to which he has become chargeable, had he not been sent out of Scotland under this section, then, and in every such case, the chargeability on such parish for such child shall cease on his being so sent out of Scotland.

Where order to be for detention in school of parochial board.

21. In Scotland, where a magistrate is about to make or has made an order for sending a child to a certified industrial school, and the child is chargeable at the time to any parish, or has been so chargeable within three months then last past, and there is in that parish a certified industrial school maintained by the parochial board thereof, and conducted in accordance with the religious persuasion to which the child belongs, and the inspector of the poor of such parish certifies to the magistrate (or to a magistrate having the like jurisdiction) that he requires the child to be sent to the certified industrial school in such parish, maintained by the parochial board thereof, and conducted in accordance with the religious persuasion to which the child belongs, then, and in every such case, the magistrate shall direct the child to be sent to the last-mentioned school accordingly, the inspector of the poor defraying the expense of conveying the child thither ; provided that, where the order of detention has been made, the application of the inspector to the magistrate be made within fourteen days of the day of the making of the order.

Order to be warrant for conveyance and detention.

22. The order of detention in a school shall be forwarded to the managers of the school with the child, and shall be a sufficient warrant for the conveyance of the child thither and his detention there.

Expenses of conveyance to school.

23. The expense of conveying to a certified industrial school a child ordered to be sent there shall be defrayed by the police authorities by whom he is conveyed, and shall be deemed part of the current expenses of those police authorities.

Evidence of order of detention.

24. An instrument purporting to be an order of detention in a school, and to be signed by two justices or a magistrate, or purporting to be a copy of such an order, and to be certified as such a copy by the clerk to the justices or magistrate by whom the order was made, shall be evidence of the order.

## VII. Management of School.

Religious instruction in school.

25. A minister of the religious persuasion specified in the order of detention as that to which the child appears to the justices or magistrate to belong may visit the child at the school on such days and at such times as are from time to time fixed by regulations made by the Secretary of State for the purpose of instructing him in religion.

Lodging child out of school.

26. The managers of a school may permit a child sent there under this Act to lodge at the dwelling of his parent or of any trustworthy and respectable person, so that the managers teach, train, clothe, and feed the child in the school, as if he were lodging in the school itself, and so that they report to the Secretary of State, in such manner as he thinks fit to require, every instance in which they exercise a discretion under this section.

Licence for living out of school.

27. The managers of a school may, at any time after the expiration of eighteen months of the period of detention allotted to a child, by licence under their hands, permit him to live with any trustworthy and respectable person named in the licence, and willing to receive and take charge of him.

Any licence so granted shall not be in force for more than three months, but may, at any time before the expiration of those three months, be renewed for a further period not exceeding three months, to commence from the expiration of the previous period of three months, and so from time to time until the period of the child's detention is expired.

Any such licence may also be revoked at any time by the managers of the school by writing under their hands; and thereupon the child to whom the licence related may be required by them, by writing under their hands, to return to the school.

The time during which a child is absent from a school in pursuance of a licence shall, except where such licence has been forfeited by his misconduct, be deemed to be part of the time of his detention in the school; and at the expiration of the time allowed by the licence he shall be taken back to the school.

A child escaping from the person with whom he is placed under a licence, or refusing to return to the school on the revocation of his licence, or at the expiration of the time allowed thereby, shall be deemed to have escaped from the school.

28. The managers of a school may, at any time after a child has been placed out on licence as aforesaid, if he conducted himself well during his absence from the school, bind him, with his own consent, apprentice to any trade, calling, or service, notwithstanding that his period of detention has not expired; and every such binding shall be valid and effectual to all intents.

Power to  
apprentice child.

29. The managers of a certified industrial school may from time to time make rules for the management and discipline of the school, not being inconsistent with the provisions of this Act; but those rules shall not be enforced until they have been approved in writing by the Secretary of State; and rules so approved shall not be altered without the like approval.

Rules of school  
to be approved  
by Secretary of  
State.

A printed copy of rules purporting to be the rules of a school so approved and to be signed by the inspector of industrial schools shall be evidence of the rules of the school.

30. A certificate purporting to be signed by one of the managers of a certified industrial school, or their secretary, or by the superintendent or other person in charge of the school, to the effect that the child therein named was duly received into and is at the signing thereof detained in the school, or has been duly discharged or removed therefrom or otherwise disposed of according to law, shall be evidence of the matters therein stated.

Evidence as to  
reception in  
school, etc.

31. The time during which a child is detained in a school under this Act shall for all purposes be excluded in the computation of time mentioned in section one of the Act of the session of the ninth and tenth years of her Majesty's reign (chapter sixty-six), "to amend the laws relating to the removal of the poor," as amended by any other Act.

Liability to re-  
moral not af-  
fected by stay at  
school.

### VIII. Offences at School, etc.

32. If a child sent to a certified industrial school, and while liable to be detained there, being apparently above ten years of age, and whether lodging in the school itself or not, wilfully neglects or wilfully refuses to conform to the rules of the school, he shall be guilty of an offence against this Act, and on summary conviction thereof before two justices or a magistrate shall be liable to be imprisoned, with or without hard labour, for any term not less than fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained subject and according to the provisions of "The Reformatory Schools Act, 1866."

Refusal to con-  
form to rules.

9. *Expenses of Children in Schools.*

Penalty on child escaping from school.

33. If a child sent to a certified industrial school, and while liable to be detained there, and whether lodging in the school itself or not, escapes from the school, or neglects to attend thereat, he shall be guilty of an offence against this Act, and may at any time before the expiration of his period of detention be apprehended without warrant, and may (any other Act to the contrary notwithstanding) be then brought before a justice or magistrate having jurisdiction in the place or district where he is found, or in the place or district where the school from which he escaped is situate; and he shall thereupon be liable, on summary conviction before such a justice or magistrate, to be, by and at the expense of the managers of the school, brought back to the same school, there to be detained during a period equal to so much of his period of detention as remained unexpired at the time of his committing the offence.

If the child charged with such an offence is apparently above ten years of age, then, on his summary conviction of the offence before two such justices or such a magistrate, he shall be liable, at the discretion of the justices or magistrate, instead of being sent back to the same school, to be imprisoned with or without hard labour for any term not less than fourteen days and not exceeding three months, and the justices or magistrate before whom he is convicted may direct him to be sent at the expiration of the term of his imprisonment to a certified reformatory school, and to be there detained subject and according to the provisions of "The Reformatory Schools Act 1866."

29 & 30 Vict. c. 117.

Penalty on persons inducing offenders to escape from certified industrial schools.

34. If any person does any of the following things, (that is to say,)—  
First, knowingly assists, directly or indirectly, a child liable to be detained in a certified industrial school to escape from the school;  
Second, directly or indirectly induces such a child so to escape;  
Third, knowingly harbours or conceals a child who has so escaped, or prevents him from returning to school, or knowingly assists in so doing,—

Every such person shall be guilty of an offence against this Act, and shall, on summary conviction thereof before two justices or a magistrate, be liable to a penalty not exceeding £20, or, at the discretion of the justices, to be imprisoned for any term not exceeding two months, with or without hard labour.

## IX. *Expenses of Children in Schools.*

Power to Treasury to contribute towards custody, etc., of children detained.

35. The commissioners of her Majesty's Treasury may from time to time contribute, out of money provided by Parliament for the purpose, such sums as the Secretary of State from time to time thinks fit to recommend towards the custody and maintenance of children detained in certified industrial schools; provided that such contributions shall not exceed 2s. per head per week for children detained on the application of their parents, step-parents, or guardians.

Power to prison authority to contract for reception of children in schools.

36. In England a prison authority may contract with the managers of a certified industrial school for the reception and maintenance therein of such children as are from time to time ordered by justices to be sent there from the district of the prison authority.

Power to guardians of poor, etc., to contribute.

37. The guardians of the poor of a union or parish, or the board of management of a district pauper school, or the parochial board of a parish or combination, may from time to time, with the consent in England of the Poor Law Board, and in Scotland of the Board of Supervision, contribute such sums as they think fit towards the maintenance of children detained in a certified industrial school on their application.

Recovery of cost of maintenance in schools in Scotland, when parishes, etc., are liable.

38. In Scotland where a child sent to a certified industrial school under this Act is at the time of his being so sent, or within three months then last past has been, chargeable to any parish, the parochial board and inspector of the poor of the parish of the settlement of such child, if

the settlement of the child is in any parish in Scotland, shall, as long as he continues so chargeable, be liable to repay to the commissioners of her Majesty's Treasury all expenses incurred in maintaining him at school under this Act to an amount not exceeding five shillings per week; and in default of payment those expenses may be recovered by the inspector of industrial schools, or any agent of the inspector, in a summary manner before a magistrate having jurisdiction in the place where the parish is situate.

Provided always that nothing in this Act shall prevent any parochial board on whose funds the cost of support of any such child has become a charge from adopting such steps for the recovery of any sums which may have been paid by such parochial board for any such child against the parish of his settlement, or for his removal, as may be competent to them under any Act for the time being in force relating to the relief of the poor in Scotland.

39. The parent, step-parent, or other person for the time being legally liable to maintain a child detained in a certified industrial school shall, if of sufficient ability, contribute to his maintenance and training therein a sum not exceeding 5s. per week.

Contribution by parent, etc.

40. On the complaint of the inspector of industrial schools, or of any agent of the inspector, or of any constable under the directions of the inspector (with which directions every constable is hereby required to comply), at any time during the detention of a child in a certified industrial school, two justices or a magistrate having jurisdiction at the place where the parent, step-parent, or other person liable as aforesaid resides may, on summons to the parent, step-parent, or other person liable as aforesaid, examine into his ability to maintain the child, and may, if they or he think fit, make an order or decree on him for the payment to the inspector or his agent of such weekly sum, not exceeding 5s. per week, as to them or him seems reasonable, during the whole or any part of the time for which the child is liable to be detained in the school.

Order for enforcement of contribution by parent, etc.

Every such order or decree may specify the time during which the payment is to be made, or may direct the payment to be made until further order.

In Scotland any such order or decree shall be held to be and to have the effect of an order or decree in each and every week for payment of the sum ordered or decreed to be paid for such week; and under the warrant for arrestment therein contained (which the magistrate is hereby authorized to grant if he sees fit), it shall be lawful to arrest weekly for payment of such weekly sum as aforesaid the wages of the defender due and current; and such arrestment shall attach not only to the wages due and payable to the defender at the date thereof, but also to the wages current for the week or other term or period in which such arrestment is executed, any law or statute notwithstanding.

Every such payment or a proper proportionate part thereof shall go in relief of the charges on her Majesty's Treasury, and the same shall be accounted for as the commissioners of her Majesty's Treasury direct; and, where the amount of the payment ordered in respect of any child exceeds the amount contributed by the commissioners of her Majesty's Treasury in respect of that child, the balance shall be accounted for and paid to the managers of the school.

The Secretary of State may, in his discretion, remit wholly or partially any payment so ordered.

Two justices or a magistrate having jurisdiction to make such an order or decree may from time to time vary any such order or decree as circumstances require, on the application either of the person on whom such order or decree is made, or of the inspector of industrial schools or his agent, on fourteen days' notice being first given of such application to the inspector or agent, or to such person respectively.

11. *Withdrawal of Certificate.*

Detention to cease on child attaining 16.

Transfer to another school by Secretary of State.

Discharge by Secretary of State.

## X. Discharge, etc., of Children from School.

41. A person who has attained the age of sixteen years shall not be detained in a certified industrial school, except with his own consent in writing.

42. The Secretary of State may at any time order a child to be transferred from one certified industrial school to another, but so that the whole period of his detention be not thereby increased.

The Secretary of State may also at any time order a child being under sentence of detention in an industrial school established under any other Act of Parliament, the general rules for the government whereof have been approved by the Secretary of State, to be transferred to a certified industrial school under this Act; and in that case the child shall, after the transfer, be deemed to be subject in all respects to the provisions of this Act, but so that the whole period of his detention be not by such transfer increased.

The commissioners of her Majesty's Treasury may pay, out of money provided by Parliament for the purpose, such sum as the Secretary of State thinks fit to recommend, in discharge of the expenses of the removal of any child transferred under the provisions of this Act.

43. The Secretary of State may at any time order any child to be discharged from a certified industrial school, or from any industrial school established under any other Act of Parliament, the general rules for the government whereof have been approved by the Secretary of State, either absolutely or on such condition as the Secretary of State approves, and the child shall be discharged accordingly.

## XI. Withdrawal, etc., of Certificate of School.

Power for Secretary of State to withdraw certificate.

Resignation of certificate by managers.

Gazetting and evidence of withdrawal, etc.

Cesser of reception of children on notice, etc.

44. The Secretary of State, if dissatisfied with the condition of a certified industrial school, may at any time, by notice under his hand addressed to and served on the managers thereof, declare that the certificate of the school is withdrawn as from a time specified in the notice, not being less than six months after the date thereof; and at that time the certificate shall be deemed to be withdrawn accordingly, and the school shall thereupon cease to be a certified industrial school.

45. The managers or the executors or administrators of a deceased manager (if only one) of a certified industrial school may give notice in writing to the Secretary of State of their intention to resign the certificate of that school, and at the expiration, in the case of managers of six months, and in the case of executors or administrators of one month, from the receipt of that notice by the Secretary of State (unless before that time the notice is withdrawn) the certificate shall be deemed to be resigned accordingly, and the school shall thereupon cease to be a certified industrial school.

46. A notice of the withdrawal or resignation of the certificate of a certified industrial school shall within one month be inserted, by order of the Secretary of State, in the 'London' or in the 'Edinburgh Gazette,' according as the school is in England or Scotland.

A copy of the 'Gazette' containing such notice shall be conclusive evidence of such withdrawal or resignation.

A certificate shall be presumed to be in force until the withdrawal or resignation thereof is proved.

47. Where notice is given of the withdrawal or resignation of the certificate of a certified industrial school, no child shall be received into the school for detention under this Act after the receipt by the managers of

the school of the notice of withdrawal, or after the date of the notice of resignation, as the case may be; but the obligation of the managers to teach, train, clothe, lodge, and feed any children detained in the school at the time of such receipt or at the date of such notice, shall, except as far as the Secretary of State otherwise directs, be deemed to continue until the withdrawal or resignation of the certificate takes effect, or until the contribution out of money provided by Parliament towards the custody and maintenance of the children detained in the school is discontinued, whichever shall first happen.

48. Where a school ceases to be a certified industrial school, the children detained therein shall be either discharged or transferred to some other certified industrial school by order of the Secretary of State.

Sect. 49 relates to houses of refuge, etc., in Scotland.

14. *Forms.*

Discharge of children detained, etc.

## XII. Expenses of Prison Authorities, etc.

50. Expenses incurred by a prison authority in England in carrying into effect the provisions of this Act shall be deemed expenses incurred by that authority in carrying into effect the provisions of The Prison Act, 1865, and shall be defrayed accordingly.

Expenses of prison authorities and county boards, how defrayed.

## XIII. Miscellaneous.

51. The following Acts—in England, the 11 & 12 Vict. c. 43 (Jervis's Act), and any Acts amending the same—shall apply to all offences, payments, and orders in respect of which jurisdiction is given to justices or a magistrate by this Act, or which are by this Act directed to be prosecuted, enforced, or made in a summary manner or on summary conviction.

Acts regulating procedure.

52. No summons, notice, or order made for the purpose of carrying into effect the provisions of this Act shall be invalidated for want of form only; and the forms in the schedule to this Act annexed, or forms to the like effect, may be used in the cases to which they refer, with such variations as circumstances require, and, when used, shall be deemed sufficient.

Use of Forms in schedule.

53. Any notice may be served on the managers of a certified industrial school by being delivered to any one of them personally, or by being sent by post or otherwise in a letter addressed to them or any of them at the school, or at the usual or last known place of abode of any of the managers, or of their secretary.

Service of notices on managers.

54. This Act shall apply to all certified industrial schools being such at the passing of this Act, and to all children sent thereto before the passing of this Act; but no child shall be detained at any industrial school, in pursuance of any order made before the passing of this Act, for a longer period than he would have been liable to be detained if this Act had not been passed.

Application of Act to existing certified schools.

## XIV. Forms.

(A.)—ORDER SENDING CHILD TO INDUSTRIAL SCHOOL.

——— } *Be it remembered, that on the ——— day of ——— in pursuance of The Industrial Schools Act, 1866, we, two of her Majesty's justices of the*  
to wit. }



14. *Forms.* *peace for the said [county] of —, do order that A.B. of — (whose religious persuasion appears to us to be —), being a child subject to the provisions of section — of the said Act, be sent to the — certified industrial school at —, and that he be detained there during —*

(Signed) L.M.  
N.O.

(C.)—COMPLAINT FOR ENFORCING IN ENGLAND CONTRIBUTION FROM PARENT, ETC.

— } *The complaint of the inspector of industrial schools [or as the case may to wit.] be made to us, the undersigned, two of her Majesty's justices of the peace for the said county of —, this — day of —, at —, in the same county, who says that one A.B. of (\*) the age of — years, or thereabouts, is now detained in the — industrial school at —, in the county of —, under The Industrial Schools Act, 1866, and has been duly ordered and directed to be detained therein until the — day of —: that one C.B., dwelling in the parish of —, in the county of —, is the parent [or step-parent, etc.] of the said A.B., and is of sufficient ability to contribute to the support and maintenance of the said A.B., his son: (\*) the said complainant therefore prays that the said C.B. may be summoned to show cause why an order should not be made on him so to contribute.*

*Exhibited before us,*

J.S.  
L.M.

C.D.

(D.)—SUMMONS TO PARENT, ETC.

(This will be in Form (A.) in Schedule to 11 & 12 Vict. c. 43.)

(E.)—ORDER ON PARENT, ETC., TO CONTRIBUTE A WEEKLY SUM.

— } *Be it remembered, that on this — day of —, at —, in the said to wit.] [county] of —, a certain complaint of the inspector of industrial schools [or as the case may be], for that one A.B., of, etc. [stating the cause of complaint as in the Form (C.) between the asterisks (\*) (\*)], was duly heard by and before us, the undersigned, two of her Majesty's justices of the peace in and for the said [county] of — (in the presence and hearing of the said C.B., if so, or the said C.B. not appearing to the summons duly issued and served in this behalf); and we, having duly examined into the ability of the said C.B., and on consideration of all the circumstances of the case, do order the said C.B. to pay to the said inspector [or to an agent of the said inspector] the sum of — shillings per week from the date of this order until the — day of —, the same to be paid at the expiration of each [fourteen, or as the case may be, days].*

*Given under our hands and seals, the day and year first above mentioned, at —, in the [county] aforesaid.*

J.S. (L.S.)  
L.M. (L.S.)

(F.)—DISTRESS WARRANT FOR AMOUNT IN ARREAR.

— } *To the constable of —, and to all other peace officers in the said to wit.] [county] of —.*

*Whereas on the hearing of a complaint made by the inspector of industrial schools [or as the case may be], that A.B., of, etc. [stating the cause of complaint as in the Form (C.) between the asterisks (\*) (\*)], an order was made on the — day of —, by us, the undersigned [or by L.M. and J.H.], two of her Majesty's justices of the peace in and for the said [county] of —, against the said C.B., to pay to the said inspector [or as the case may be] the sum of — per week from the date of the said order until the — day of —, the same to be paid at the expiration of each [twenty-eight] days [or as the case may be] (\*): and whereas there is due upon the said order the sum of —, being for [three] periods of [fourteen] days each, and default has been made therein for the space of fourteen days:*

*These are therefore to command you, in her Majesty's name, forthwith to make*

*distress of the goods and chattels of the said C.B., and if within the space of [five] days next after the making such distress the said last-mentioned sum, together with the reasonable charges of taking and keeping the said distress, is not paid, that then you do sell the said goods and chattels so by you distrained, and do pay the money arising from such sale to —, the clerk of the justices of the peace for the — of —, that he may pay and apply the same as by law directed, and may render the overplus (if any), on demand, to the said C.B.; and if no such distress can be found, then that you certify the same to us, to the end that such proceedings may be had therein as the law requires.*

*Given under our hands and seals, this — day of —, at —, in the [county] aforesaid.*

J.S. (L.S.)  
L.M. (L.S.)

(G.)—COMMITMENT IN DEFAULT OF DISTRESS.

— } *To the constable of —, and to the keeper of the [prison] at —, in to wit. } the said [county] of —.*

*Whereas [etc., as in the Form (F.) to the single asterisk (\*), and then thus]: And whereas afterwards, on the — day of — last, I, the undersigned, together with L.M., Esquire [or J.S. and L.M. Esquires], two of her Majesty's justices of the peace in and for the said [county] of —, issued a warrant to the constable of — aforesaid, commanding him to levy the sum of —, due upon the said recited order, being for [three] periods of [fourteen] days, by distress and sale of the goods and chattels of the said C.B.; and whereas a return has this day been made to me, the said justice [or the undersigned, one of her Majesty's justices of the peace in and for the said [county] of —], that no sufficient goods of the said C.B. can be found:*

*These are therefore to command you, the said constable of —, to take the said C.B., and him safely to convey to the [prison] at — aforesaid, and there deliver him to the keeper thereof, together with this precept: and I do hereby command you, the said keeper of the said [prison], to receive the said C.D. into your custody in the said [prison], there to imprison him for the term of —, unless the said sum, and all costs and charges of the said distress, and of the commitment and conveying of the said C.D. to the said [prison], amounting to the further sum of —, shall be sooner paid unto you, the said keeper; and for your so doing this shall be your sufficient warrant.*

*Given under my hand and seal, this — day of —, in the year of our Lord —, at —, in the [county] aforesaid.*

J.S. (L.S.)

## Information.

- I. *Compounding of Informations on Penal Statutes*, p. 53.
- II. *Information before Justices out of Sessions*, see *tit. "Conviction," Vol. I.*

### I. Compounding Informations on Penal Statutes.

The compounding of informations on penal statutes is a misdemeanour against public justice, by contributing to make the law odious to the people. (4 *Blackst. Com.* 136.) Therefore, in order to discourage malicious informers, and to provide that offences when once discovered shall be duly prosecuted, it is enacted by the 18 Eliz. c. 5, s. 4, "That, if any person or persons (except the clerks of the Court only, for making out of process otherwise than is above appointed) shall offend in suing out of process, making of composition, or other misdemeanour, contrary to

Compounding informations on penal statutes.

18 Eliz. c. 5, s. 4.

1. *Compounding, etc.*

1. *Compounding, etc.*

What justices may hear and determine these offences.

To what cases the Act extends.

the true intent and meaning of this statute, or shall, by colour or pretence of process, or, without process, upon colour or pretence of any matter of offence against any penal law, make any composition, or take any money, reward, or promise of reward, for himself, or to the use of any other, without order or consent of some of her Majesty's Courts at Westminster, that then he or they so offending, being thereof lawfully convicted, shall stand on the pillory (*a*), in some market town next adjoining where the same offence shall be committed, in the open market time, and there remain by the space of two hours; and shall from and after such conviction for ever be disabled to pursue, or be plaintiff or informer in any suit or information upon any statute popular or penal; and shall also, for every such offence, forfeit and lose ten pounds of lawful English money, the one half thereof to the Queen's Majesty, her heirs and successors, and the other half to the party grieved thereby, to be recovered in any Court of record, by action of debt or information, in which no essoin, protection, injunction, or wager of law shall be permitted or allowed; and that justices of oyer and terminer, justices of assize in their circuits, and justices of peace in their quarter sessions, shall have full power and authority to hear and determine all offences to be committed or done contrary to the true intent and meaning of this present Act."

This statute was passed to restrain the compounding of offences cognizable in the *superior Courts*. It does not extend to offences cognizable only before magistrates in their summary jurisdiction; and, therefore, an indictment for compounding such an offence was holden bad in arrest of judgment. (*R. v. Crisp and others*, 1 B. & Ald. 282.)

The statute extends to *common informers* only, and not to cases where the penalty is given to the party grieved. (*Kirkham v. Wheeley*, 1 Salk. 30; 1 Ld. Raym. 27, S. C.; 2 Hawk. 279.)

In *Gotley's case* it was held that, to compound an offence against the 13 Geo. 3, c. 84, s. 13 (the then General Turnpike Act), though no action or proceeding be depending, was within the 18 Eliz. c. 5, s. 4. In that case, *Richard Gotley* was tried and convicted before *Le Blanc, J.*, at the *Shrewsbury Lent Assizes*, 1805, on an indictment upon the above stat., 18 Eliz. c. 5, s. 4, for compounding an offence against the then Turnpike Act (13 Geo. 3, c. 84, s. 13), and taking a sum of money without process to prevent an action being brought, without the order or consent of any of his Majesty's Courts at Westminster, and without lawful authority. The indictment contained several counts: some of them stated the party of whom the money was taken to have committed the offence, whereby the penalty was incurred; others of them stated only that the prisoner compounded and took the money by and upon colour and pretence of a certain matter of offence pretended to have been committed. It was satisfactorily proved that *Edward Round*, the person named in the indictment, from whom the prisoner was charged to have taken money by way of composition, had incurred a penalty of 5*l.* under the 13 Geo. 3, c. 84, s. 13, by suffering his waggon to be drawn on a turnpike road by more than four horses, he being the owner, and that the prisoner had received from him 5*l.* 2*s.* (the 2*s.* over was to have been returned) by way of composition to prevent any legal proceedings, the prisoner having applied to *Round* for the purpose, and demanded the 5*l.* as a penalty which *Round* had so incurred; and it also appeared that no process was sued out or information laid before any magistrate. Judgment was respited on a doubt which occurred to *Le Blanc, J.*, at the

(*a*) By the 56 Geo. 3, c. 138, this part of the punishment cannot now be inflicted. But s. 2 of that statute empowers the Court to pass such sen-

tence of fine or imprisonment, or of both, in lieu of the sentence of pillory, as to the Court shall seem proper; and see the 7 Will. 4 & 1 Vict. c. 23.

trial, whether the offence was within the 18 Eliz. c. 5, so as to subject the prisoner to the specific punishment prescribed by that Act, inasmuch as no action or proceeding was depending, in which the order or consent of any Court in Westminster Hall for a composition could be obtained. The judges, at a meeting (May 11, 1805), were all of opinion that the conviction was right; the 18 Eliz. applying to all cases of taking a penalty incurred, or pretended to be incurred, without leave of a Court at Westminster, or without judgment or conviction. (*R. v. Gotley, R. & R. 84; 3 Burn's J. 24th edit. S. C.*)

The statute extends to penal actions, where the whole penalty is given to the prosecutor. (4 *Blackst. Com.* 136, n. (3).)

A. threatened B. that he would inform against him for selling spirits without a licence, unless B. would give him a sum of money. B. had not, in fact, sold any spirits; but he gave A. the money to prevent an information:—It was held, that A. was indictable under the above stat., although B. had not committed any offence, and although no information was ever preferred, nor any process sued out. (*Reg. v. Best, 9 Car. & P. 368; 2 Moody, C. C. R. 124, S.C.*)

It has been held, that threatening, by letter or otherwise, to put in motion a prosecution by a public officer to recover penalties for selling a medicine without a stamp (contrary to the now repealed Act of the 4 Geo. 3, c. 56), for the purpose of obtaining money to stay the prosecution (not being such a threat as a firm and prudent man might not be expected to resist), was not in itself an indictable offence at common law, though it was alleged that money was obtained. It seems to have been considered that such an offence would be indictable under the above statute of Elizabeth. (*R. v. Southerton, 6 East, 126; sed quære, and see R. v. Crisp and others, 1 B. & Ald. 286, 287.*) But no indictment for any attempt to commit such a statutable misdemeanour can be sustained as a misdemeanour at common law, without at least bringing the offence intended within, and laying it to be against, the statute. Though, if the party so threatened had been alleged to be guilty of the offence imputed within the statute imposing the duty and creating the penalty, such an attempt to compound and stifle a public prosecution for the sake of private lucre, in fraud of the revenue and against the policy of the statute (which gives the penalty as auxiliary to the revenue, and in furtherance of public justice for the sake of example), might also, upon general principles, have been deemed a sufficient ground on which to have sustained the indictment at common law. (*Ib.*)

## Inquest and Inquisition.

AN inquisition or inquest is the act and finding of a jury duly summoned to inquire of matters upon evidence laid before them.

Some inquisitions are of themselves convictions, and cannot afterwards be traversed or denied; and, therefore, the inquest or jury ought to hear all that can be alleged on both sides,—such as inquisitions of *felo de se* and such like.

But other inquisitions may be afterwards traversed and examined into, as a coroner's inquisition of death, when it finds any one guilty of murder or manslaughter. (See 4 *Blackst. Com.* 301.)

As to the form, etc., of coroner's inquisition, see tit. "*Coroner*," Vol. I.

As to the effect and proof of inquisitions, see tit. "*Evidence*," Vol. II.

As to when a certiorari lies for the removal of, see tit. "*Certiorari*," Vol. I.

## Inspection.

Acts of Parliament frequently empower parties to inspect and take copies of proceedings, imposing penalties on officers for the refusal.

When not compelled in criminal cases.

It is a constant and invariable rule that, in *criminal* cases, the party shall never be obliged to furnish evidence against himself. (*R. v. Worrenham*, 1 *Ld. Raym.* 705; *R. v. Mead*, 2 *Ld. Raym.* 927; *R. v. Cornelius*, 2 *Str.* 1210; *Mayor of Lynn v. Denton*, 1 *T. R.* 689; *R. v. Shelley*, 3 *T. R.* 142; *R. v. Heydon*, 1 *W. Blackst.* 351.) The defendant will, therefore, in such cases, never be compelled to allow an inspection of a document in his possession.

In *R. v. Justices of Buckinghamshire* (8 *B. & C.* 375; 2 *Man. & R.* 412, *S. C.*), on an indictment against a county for not repairing a bridge, preferred at the instance of the inhabitants of a parish, and where the question intended to be tried was, whether the inhabitants of the parish, or the county, were liable to repair it, the Court refused to compel the inhabitants of the parish to allow the parties indicted to inspect the parish books and documents relating to the repair of the bridge, on the ground that a defendant is never bound to produce evidence against himself. (See also *R. v. Cadogan, Earl of*, 5 *B. & A.* 902.)

Books of public nature.

In other cases, where the inspection sought for is not of such a nature as would naturally furnish evidence against the party granting it in a *criminal* case, and where the books, etc., sought to be inspected are of a *public* nature, wherein the party seeking the inspection has an interest, the Court will order such inspection. (See *Tidd*, 9th edit. 593.)

Records of courts of law.

The records of the courts of law are open to the inspection of every person; and the Court will order inspection to be allowed if the officer refuse it. (See *Fox v. Jones*, 7 *B. & C.* 732.)

Books of quarter sessions.

The books of *quarter sessions* are public books, which every one has a right to inspect. (*Herbert v. Ashburner*, 1 *Wils.* 297; *R. v. Berking*, cited in *R. v. Purnell*, *Id.* 240; 1 *Bl. Rep.* 39, *S. C.*; *R. v. Sheriff of Chester*, 1 *Chit. Rep.* 477. But see *Id.* 479, where the general right of every man to inspect the books of the quarter sessions was doubted by *Abbot, C. J.*)

Parish books, Custom House, Post Office, etc., books.

*Parish books*, and the books of the *Custom House*, *Post Office*, *Bank*, *East India Company*, etc., are, to some purposes, considered as public books; and persons who have an interest therein have a right to inspect them. (*Geery v. Hopkins*, 2 *Ld. Raym.* 851; 7 *Mod.* 129, *S. C.*; *Moody v. Thurston*, 1 *Str.* 304; *Tidd*, 9th edit. 593.) Every parishioner has a right to inspect the parish books (*Anon.*, 2 *Chit. Rep.* 296), if he require the inspection for parochial purposes, otherwise not. (*May v. Gwynne*, 4 *B. & Ald.* 301; *R. v. Smallpiece*, 2 *Chit. Rep.* 88; *R. v. Harrison*, 9 *Q. B.* 794.) But, where it was required in order to sustain an information against overseers for making an illegal rate, the Court refused it. (*R. v. Lee*, 1 *Wils.* 240.) Nor is inspection granted of parish books, custom-house books, etc., for the trial of questions of a *private* nature, or in collateral actions, brought by or against persons who have no interest therein, and especially as to custom-house and other public revenue books; for such inspection might be prejudicial to the revenue. (See *Cox v. Copping*, 5 *Mod.* 395; 1 *Ld. Raym.* 337, *S. C.*; *Benson v. Port*, 1 *Wils.* 240; *Crew v. Blackburne*, *Id.*; *R. v. Holland*, 4 *T. R.* 691; 12 *Vin. Ab.* 147, *pl.* 11; *Tidd*, 9th edit. 594.) A rated parishioner has a right to inspect the accounts of the expenditure of the parish moneys, kept by the guardians of the poor appointed under the 22 Geo. 2, c. 83; and the Court of Queen's Bench have granted a *mandamus* to the guardians, etc., commanding them to allow such inspection. (*R. v. Great Farrington*, 9 *B. & C.* 541.) And it has been decided, in a suit touching the validity of a parish rate, that the plaintiff is entitled to inspect the parish books, without paying any costs. (*Newell v. Simpin*, 6 *Bing.* 565; 4 *M. & P.* 395, *S. C.*)

A *mandamus* will not go to inspect the accounts relating to county rates on an application made to the Court of quarter sessions for the inspection, whilst the Court was in actual discussion upon the accounts. (*R. v. Justices of Nottingham*, 1 *Harr. & W.* 318.)

Inspection.

County rates.

The *court-rolls* and books of a manor are of a public nature; the tenants have an interest therein, and the lord who has the custody of them is considered merely as a trustee. (*Groenvelt v. Burrell*, 1 *Ld. Raym.* 253; *Warriner v. Giles*, 2 *Str.* 955.) Hence it is of course in the Queen's Bench to grant leave to inspect the court-rolls of a manor, on the application of a *tenant of the manor*, who has been refused that permission by the lord. (*Ex p. Hutt*, 7 *Dowl.* 690; *R. v. Shelley*, 3 *T. R.* 141; *Tidd*, 9th edit. 594; *Ex p. Barnes*, 2 *Dowl. N. S.* 20.) And this right of the tenant is not confined simply to what relates to his own title (*R. v. Shelley*); and he is entitled to it, though no action is pending (*R. v. Lucas*, 10 *East*, 235; *R. v. Tower*, 4 *M. & Selw.* 162); but this is otherwise as to a freehold tenant, who has no such right to inspect, unless an action is pending. (*R. v. Allgood*, 7 *T. R.* 746; *Rogers v. Jones*, 5 *D. & Ry.* 484.) A stranger has no such right. (*Talbot v. Villeboys*, cited 3 *T. R.* 142.)

Court-rolls, etc.

The books of a *corporation* are of a public nature; and every member of a corporation, having an interest therein, has a right to inspect and take copies of them, for any matter that concerns himself, though it be in a dispute with others. (*R. v. The Fraternity of Hostmen in Newcastle-upon-Tyne*, 2 *Str.* 1223; *In re Burton and the Sadlers' Co.* 31 *L. J.*, *Q. B.* 62; *R. v. Beverley*, 8 *Dowl.* 140.) The inspection, when granted, is confined to the matter in dispute. (*Mayor of London v. Swinland*, 1 *Barnard.* 455; *Crew, q. t. v. Saunders*, 2 *Str.* 1005; *R. v. The Fraternity of Hostmen in Newcastle-upon-Tyne*, 2 *Str.* 1223; *Tidd*, 9th edit. 595; *R. v. Babb*, 3 *T. R.* 579.)

Corporation books.

So, if a corporation bring an action for toll, the defendant, if he be a member, may have a rule upon the town-clerk to give him inspection of all charters, records, deeds, etc., in his custody, relating to such tolls. (*Barnstable v. Lathey*, 3 *T. R.* 303; *Lynn v. Denton*, 1 *T. R.* 689; *Mayor of Southampton v. Graves*, 8 *T. R.* 590.) In an action by a corporation on a bye-law, the Court will grant the defendant inspection of the bye-law in the books of the corporation, whether he be a member of the corporation or not. (*Harrison v. Williams*, 3 *B. & C.* 162.) But the mere circumstance of a party being a member of a corporation will not give him a right to inspect the corporation books, etc., respecting matters of private concern, having no reference to his rights as a burgess; and therefore, where an attorney, having brought an action against a corporation for the amount of his bill for business done, applied for an inspection of the corporation books, to enable him to prove his retainer, *Littledale, J.*, refused it, saying that, if the plaintiff wished the books at the trial, he might give the defendants notice to produce them. (*Stevens v. Mayor of Berwick*, 4 *Dowl.* 277.) In criminal cases, such as an indictment or information against a member of a corporation, the Court will not compel the corporation to grant inspection of their books to the prosecutor. (*R. v. Purnell*, 1 *W. Bl.* 37; 1 *Wils.* 239; *R. v. Heydon*, 1 *W. Bl.* 351.)

In *R. v. Harrie* (6 *C. & P.* 105), which was the case of a prosecution for sending a threatening letter, *Bolland, B.*, ordered the letter to be deposited in the hands of the clerk of the peace, in order that the defendant's witnesses might inspect it before the trial.

Documents ordered to be deposited with clerk of peace for inspection.

As to the defendant's right to have, and the mode of obtaining, a copy of the indictment or conviction against him, see *ante*, 39, and tit. "*Conviction*," Vol. I.

Copy of indictment.

## Judgment.

**What.** A JUDGMENT is the conclusion and sentence of the law, passed by the Court upon facts found or admitted in the course of the criminal proceeding against a party.

A verdict is the finding of a jury; see tit. "*Trial*," Vol. V.

As to the mode of proving judgments, see tit. "*Evidence*," Vol. II.

**When Court divided in opinion.**

If the Court be equally divided in opinion, no judgment can regularly be entered. (See *Iveson v. Moore*, 1 Salk. 17; 1 Ld. Raym. 486.) But the Court may adjourn to another day and then give judgment. (6 St. Tr. 838.)

**Arresting the judgment.**

[*Arresting the Judgment*.]—At any time between the conviction and the sentence, or immediately at the assizes, the defendant may move the Court in arrest of judgment. (*R. v. Holt*, 5 T. R. 445; 2 Hawk. c. 48, s. 1; 4 Blackst. Com. 374; see *Tidd*, 9th edit.)

The grounds on which this motion may be granted are confined to objections which arise upon the face of the record itself. (*Sutton v. Bishop*, 4 Burr. 2287; *Truscott v. Carpenter*, 1 Ld. Raym. 231.)

Want of sufficient certainty in the indictment, respecting the statement of the offence, apparent on the face of the indictment, is a sufficient ground. (4 Blackst. Com. 375; *R. v. Lookup*, 3 Burr. 1901; *R. v. Waddington*, 1 East, 146. See *ante*, 15.)

On a general verdict of guilty, it is no ground for arresting the judgment that one or more of the counts are bad, if there be any one count that is good. (*Grant v. Astle*, 2 Dougl. 730. See *R. v. Turner*, R. & M. C. C. 47.)

The motion on arrest of judgment may be grounded on any defect apparent in any part of the record, which imports that the proceedings were inconsistent or repugnant, and would make the sentence appear irregular to future ages; and such defects are not confined to the indictment itself. (1 Chit. C. L. 662.)

If the judgment be once pronounced, though before the actual entry of it, the Court ought not to attend to a motion in arrest of it, but leave the defendant to his writ of error. (*R. v. Lookup*, 3 Burr. 1901, 1903; *Com. Dig. Indictment* (N).)

**Appearance of defendant.**

The defendant must be personally before the Court to move in arrest of judgment; because there is the strongest presumption possible that he is guilty. (*R. v. Spragg*, 2 Burr. 930, 931; 1 Blackst. Rep. 209; *Com. Dig. Indictment*, (N).) And so, if several be found guilty, they should, it seems, be all present. (*R. v. Hollingberry*, 6 D. & R. 345; 4 B. & C. 329, S. C.) But, where the jury find a verdict, in which they submit a question to the Court, though not professedly special, his presence will be dispensed with on the argument, because this presumption will not then arise. (*R. v. Nicholls*, 2 Str. 1227; *R. v. Spragg*, 2 Burr. 931.)

It should also seem that, where the judgment against the defendant could not be corporal, but only be the payment of a fine, his personal appearance is not necessary. (*Reg. v. Templeman*, 1 Salk. 55, 56; *Duke's Case*, Id. 400; 1 Ld. Raym. 267, S. C.; 2 Hawk. c. 48, s. 17, *infra*.) If the defendant be in actual custody, he must apply for a *habeas corpus* to enable him, on being brought up, to make the motion. (*R. v. Spragg*, 2 Burr. 931; 1 Blackst. Rep. 209, S. C.)

**Respitting sentence or execution.**

When a motion in arrest of judgment is made at the assizes, and the judge thinks there may be good grounds for arresting it, the sentence is respited, to take the opinion of the Court for Crown Cases Reserved. If the judge thinks otherwise, he then passes sentence; but he may, nevertheless, respite execution, in order to take the opinion of the

Court for Crown Cases Reserved upon the point. (See tit. "*Appeal*," Vol. I.)

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If the judgment be ultimately arrested, all the proceedings will be set aside, and judgment of acquittal will be given; but a subsequent indictment may at any time be preferred. (*R. v. Burridge*, 3 *P. Wms.* 499; *Vaux's Case*, 4 *Co.* 39 *b*; *Com. Dig. Indictment*, (N); 4 *Bl. Com.* 375.)

*Presence of Defendant.*—The Court may assess a fine, but cannot award any corporal punishment against a defendant, unless he be personally present. (2 *Hawk. c.* 48, s. 17; *R. v. Hann*, 3 *Burr.* 1786; *R. v. Hollingberry*, 4 *B. & C.* 329; 6 *D. & R.* 345, *S. C.*) The defendant, to mitigate a fine, must appear in person. (3 *Salk.* 33.)

Presence of defendant.

On certain occasions the Court will dispense with the personal appearance of delinquents to receive judgment. (*Anon.*, *Lofft.* 28.) The Court refused to dispense with it in a case of aggravated assault. (*Anon.*, *Lofft.* 42.) A justice convicted of a misdemeanour in his office must attend in person to receive the judgment of the Court; but, upon an affidavit of age and infirmity, the Court will dispense with his personal attendance. (*R. v. Constable*, 7 *D. & R.* 663; 3 *B. & Adol.* 659, *n.*, *S. C.*) Personal appearance was dispensed with where the defendants were in Ireland, and where there were no aggravating circumstances. (*Anon.*, *Lofft.* 58.)

The Court cannot compel a prosecutor to be at the expense of bringing a defendant in custody up to receive judgment for a misdemeanour; but, if the defendant is too poor to come up at his own expense, they will pass judgment in his absence. (*R. v. Bolts*, 8 *D. & R.* 65; 5 *B. & C.* 334, *S. C.*) Where a defendant convicted upon an indictment for a libel was committed to prison at the instance of the prosecutor, who would not afterwards bring him up for judgment, the Court, at the prayer of the defendant, passed judgment in his absence. (*Ib.*)

It seems that personal appearance of the defendant to receive judgment may be dispensed with by consent. (*Anon.*, *Lofft.* 252.)

Where defendant had suffered judgment by default on an indictment for a nuisance to a navigable river, it was held that judgment that the nuisance should be abated, could not be given in his absence, and that the proper course was to sue out a writ of *capias* and proceed to outlawry. (*Reg. v. Chichester*, 2 *Den. C. C.* 458.)

*Compelling Defendant to attend Judgment.*—If the defendant be at large, and will not attend voluntarily, a *capias* is awarded and issued, to bring him to receive his judgment; and, if he abscond, he may be prosecuted to outlawry. (4 *Bl. Com.* 375. See tit. "*Process*," *post.*)

Compelling attendance of defendant, to receive judgment.

In case of a conviction for a misdemeanour, if the defendant be present, he will of course be committed during the interval, unless the prosecutor will consent to his liberation on his recognizance to appear and receive judgment. (*R. v. Waddington*, 1 *East*, 159; *R. v. Wilkes*, 4 *Burr.* 2539.)

*Compromise.*—As to compromises, and when allowed, see tit. "*Compromise*," Vol. I.

Compromise.

*Judgment, where several Defendants.*—Judgment has been allowed, under some circumstances, to be passed on one defendant convicted for conspiracy before the conviction of the other. (*R. v. Cooke*, 5 *B. & C.* 538; 7 *D. & R.* 672, *S. C.*)

Several defendants.

Where, on an indictment against two persons for jointly committing a capital felony, the jury found one guilty of such felony, and the other guilty of simple larceny, by which the prisoners would be subject to two distinct judgments, it was held that judgment could not be given against both; but that, on a pardon being granted, or a *noli prosequi* entered as to one, judgment might be given against the other. (*R. v. Hempstead*, *R. & R.* 344. And see *R. v. Butterworth*, *Id.* 520.)

Two persons charged on indictment with a joint felony ought not to be sentenced thereon on proof of two distinct felonies. If a verdict of



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guilty be given against both, judgment may be given against the party who is proved to have committed the first felony in order of time. (*Reg. v. Gray*, 2 Den. C. C. 87.)

Where there are several defendants, a joint award of one fine against them all is erroneous; for it ought to be several against each defendant: otherwise, one who hath paid his proportionable part might be continued in prison till all the others have also paid theirs, which would be in effect to punish him for the offence of another. (2 *Hawk. c.* 48, s. 18.)

Defendant convicted of several offences.

*Judgment, where several Offences.*]—Where an offender already under sentence of imprisonment or transportation for another crime is convicted of felony, it is enacted by the 7 & 8 Geo. 4, c. 28, s. 10, that the Court may pass a second sentence on him, to commence after the expiration of the first; and this indeed seems to have been held proper even before the passing of this Act. (*R. v. Wilkes*, 4 Burr. 2577; 4 Bro. P. C. 367; *R. v. Williams*, 1 Leach, 536). So a sentence of transportation may be a second time passed upon a prisoner, although the term for which he was before transported is unexpired. (*R. v. Bath*, *Id.* 441.) But a man on whom sentence of death has been actually passed, ought not (whilst under that sentence) to be brought up to receive judgment for another felony, notwithstanding he may have been under such sentence when he was tried, and omitted to plead his prior attainder. (*R. v. Brady*, R. & R. 268.)

The act of pronouncing judgment.

*Pronouncing the Judgment.*]—In capital cases, before judgment is pronounced upon the prisoner, the crier makes proclamation, commanding “all manner of persons to keep silence, whilst sentence of death is passed upon the prisoner at the bar (or other judgment is given against him), upon pain of imprisonment.” It is not necessary, however, that this form should appear on the record; and its omission will not be material. (*Dick. Sess.* 228; *R. v. Ward*, 2 Ld. Raym. 1469.) The defendant, in capital cases, must be always asked if he has anything to say why sentence of death should not be passed upon him; and this must appear on the record. (*Com. Dig. Indict.* (N); 4 Blackst. Com. 575; 1 Chit. C. L. 700; *R. v. Speke*, 3 Salk. 358.) And, on this, the defendant may urge anything in arrest of judgment. (See *ante*, 58.) The judge usually, in capital cases, addresses the prisoner, and comments on the crime before passing judgment. In cases not capital, these proceedings are not adopted.

Nature of judgments.

*Nature of Judgments.*]—With respect to the nature of judgments, some are *fixed and stated*, as in the case of *treason*, *felony*, and most misdemeanours; the particular forms of which may be seen under their respective titles.

Others are *discretionary and variable*, according to the different circumstances of each case: thus, for crimes of an infamous nature, such as perjury, or forgery at common law, gross cheats, conspiracy not requiring a villainous judgment, keeping a bawdy-house, bribing witnesses to stifle their evidence, and other offences of the like nature, it seems to be in a great measure left to the prudence of the Court to inflict such corporal punishment, and also such fine and binding to good behaviour for a certain time, as shall seem most proper and adequate to the offence (2 *Hawk. c.* 48, s. 19).

With respect to the different kinds of punishments for each particular offence, see the various titles of offences throughout this work.

This discretionary judgment which the judges are allowed to adopt must not be exercised arbitrarily or oppressively. (1 Chit. C. L. 711.) No new punishment can be inflicted.

A judgment contrary to the verdict is void.

Where, upon an indictment, an act is charged to have been committed feloniously, and the jury find a verdict of guilty, although the charge, as laid, does not amount to felony, yet, if it does amount in law to a misde-

meanour, the Court will pronounce judgment as for that offence. (*R. v. Scofield, Cald.* 397.)

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The first count of an indictment charged an assault with intent to ravish; the second a common assault. The jury found the defendant guilty of the misdemeanour and offence in the said indictment specified; and the Court adjudged him, for the same misdemeanour, to be imprisoned two years and kept to hard labour:—Held, upon writ of error, that the word misdemeanour was *nomen collectivum*, and that the finding of the jury, therefore, was in effect that the defendant was guilty of the whole matter charged by the indictment, and consequently that the judgment was warranted by the verdict. (*R. v. Powell, 2 B. & Adol.* 75.)

But a general judgment for the Crown, on an indictment containing several counts, one of which is bad, and when the punishment is not fixed by law, cannot be supported. (*O'Connell v. Reg.* (in error), 11 *Cl. & Fin.* 155.)

Where, therefore, an indictment against different defendants consisted of several counts, charging them with various illegal acts, and some of the counts were bad, and on some of the good counts there were bad findings, and the judgment against each of the defendants was stated to be in respect of "his offences aforesaid," it was held that each count must be considered as charging a separate offence, and that the expression "his offences aforesaid" must be treated as extending to all the offences of which each defendant had been found guilty; and, as some of the counts and some of the findings were bad, such judgment could not be supported. (*Ib.* And see *Gregory v. Reg.* (in error), 15 *Q. B.* 957; 19 *L. J., Q. B.* 367.)

But, *semble*, where a defendant is found guilty upon any part of an indictment on which he receives judgment, it is not a sufficient ground for reversing the judgment that it contains no entry of a verdict on another part of the indictment. (*Ib.* And see *Latham v. Reg.* 5 *B. & S.* 635; 33 *L. J., M. C.* 197.)

When there is a doubt as to whether any particular count is good or bad, the difficulty may be obviated by passing the same judgment upon each count separately. (*Reg. v. Carter, 9 Jur.* 178.)

The word "felony" is not *nomen collectivum*, meaning felony generally, but points to one particular charge of felony; and therefore a verdict of guilty "of the felony aforesaid," upon an indictment containing more than one count for felony, is bad for uncertainty; and the Court is not at liberty to apply it to the first offence only. (*Campbell v. Reg.* (in error), 11 *Q. B.* 799; 15 *L. J., M. C.* 76. And see *Ryalls v. Reg.* (in error), 11 *Q. B.* 781.)

Formerly, where there was judgment erroneous in some technical point, the Court of Error was compelled to reverse the judgment, and could neither amend it nor send it back to be corrected. Now, however, by the 11 & 12 Vict. c. 78, s. 5, the Court of Error may either pronounce the proper judgment, or remit the record to the Court below, in order that such Court may pronounce the proper judgment.

Where upon an indictment containing 9 counts, some of which were bad, there was a general judgment of transportation for 14 years, the Court held that they must be taken to be the same 14 years upon each count, and that, if there was one good count in the indictment, the case was within the statute. (*Holloway v. Reg.* (in error), 2 *Den. C. C.* 287.)

If a statute direct that the punishment shall be fine, imprisonment, or whipping, no two of these species of punishment can be inflicted. (*R. v. Howell, R. & R.* 253.) Yet, where a statute made an offence felony, though it specified a particular mode of punishment for the offence, it was held that the Court might, nevertheless, pass any smaller punishment which might be inflicted in a case of felony. (*R. v. Hudson, R. & R.* 285.) Now, however, by the 7 & 8 Geo. 4, c. 28, s. 8, every person convicted of any felony not punishable with death shall be punished in the manner prescribed by the statute specially relating to such felony.

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And every person convicted of any felony for which no punishment is specially provided shall be punished under that Act, viz. with transportation (a) for seven years, or imprisonment not exceeding two years; and, if a male, to be once, twice, or thrice publicly or privately whipped, if the Court shall so think fit.

A judgment of imprisonment against a defendant, to commence in future, *i.e.* from and after the determination of an imprisonment to which he was before sentenced for another offence, is good in law. (*Wilkes v. Regem (in error)*, 4 Bro. P. C. 367.)

The time and place of the execution of a convicted felon form no part of the sentence. (*R. v. Doyle*, 1 Leach, C. C. 67.)

It is not the practice of any Court of criminal jurisdiction to make the day upon which execution of any corporal punishment is to be done a part of the original sentence. The time of inflicting such punishment is usually left, either to the discretion of the officer to whom the execution of the sentence belongs, or is appointed by a particular rule of the Court which awards the punishment. (*Atkinson v. Regem (in error)*, 3 Bro. P. C. 517.)

Form and record of the judgment.

*Form and Record of Judgment.*—When the judgment is pronounced, it ought, with all the preceding matter, to be entered on the record. (See various forms, 4 *Ohit. C. L.* 373, *etc.*)

The record in a case of felony at the quarter sessions, after stating that the defendants were indicted for stealing oats, to which they pleaded not guilty, and a verdict of guilty thereon, added, "that because it appeared to the justices that, after the jury had retired, one of them had separated from the other jurors, and conversed respecting his verdict with a stranger, it was considered that the verdict was bad;" and it was therefore quashed, and a *venire de novo* awarded to the next sessions: and it then proceeded to set out the appearance of the parties at such sessions, and the trial and conviction by the second jury, "whereupon, all and singular the premises being seen and considered, judgment was given," *etc.*:—Held, on a writ of error, that such judgment was right. (*R. v. Fowler*, 4 B. & Ald. 273.)

In cases of a traverse at the sessions, a record is also made by the clerk of the peace, comprising a complete history of the whole proceedings, the style of the Court, the indictment, the process to compel an answer, the traverse itself, the trial by the jury, their verdict, the judgment of the Court, and the fine assessed by the magistrates. (*Dick. Sess.* 155.)

It is not necessary, in recording judgment, to refer to the statute which inflicts the punishment. (*Murray v. Reg. (in error)*, 7 Q. B. 700; 14 L. J., Q. B. 357.)

For a form of entering an award of a new trial and of final judgment and sentence, see *King v. Reg. (in error)*, 18 L. J., Q. B. 253.

An entry in the following words, "It is ordered," *etc.*, is not a *judgment*, but an *order*; and, in such a case, on error, a superior Court would direct a *procedendo* to the inferior Court to give judgment, and bail in the mean time. (*R. v. Kenworthy*, 1 B. & C. 711; 3 D. & R. 173, S. C.)

In *Gregory v. Reg. (in error)*, (15 Q. B. 957; 19 L. J., Q. B. 367), it was held by the Queen's Bench that an addition to the judgment that "he (the defendant) be placed in the first division of the fourth class of prisoners in the Queen's Prison," was not any part of the judgment, but a mere order; and the Court of Exchequer Chamber held that, even if this direction was not warranted by an order of the Secretary of State, under the 5 & 6 Vict. c. 22, yet it did not vitiate the judgment.

A defective judgment, omitting an essential part of the judgment required by law, is bad. (*R. v. Walcot*, 4 Mod. 395; 2 Salk. 632, S. C.; *R. v. Fletcher*, R. & R. C. C. 58, *etc.*)

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(a) Now altered to penal servitude. (See the 16 & 17 Vict. c. 99, the 20 & 21 Vict. c. 3, and the 27 & 28 Vict. c. 47.)

So is an excessive judgment. (*R. v. Ellis*, 8 D. & R. 173; *S. C.* 5 B. & C. 395.)

There is no exclusively appropriate form for the commencement of the judgment of the Court upon a conviction for a misdemeanour. (*King (In re)*, 15 L. J., Q. B. 2.)

*Altering and amending the Judgment.*]—In felonies or misdemeanours, the Court may alter the judgment passed before it becomes matter of record, and may pass another. (*R. v. Price*, 6 East, 328; *R. v. Justices of Leicestershire*, 1 M. & Sel. 442; 2 Hawk. c. 48, s. 20; *Com. Dig. Indictment* (N); *Fletcher's case*, R. & R. 60; *R. v. Wyatt*, Id. 230.) It is sometimes done at the assizes. (*Ib.*) And the justices at sessions have the same power during the session, because it is regarded as only one day; but they cannot do it at any subsequent period, unless an adjournment be entered on the roll. (*Inter the Inhabitants of St. Andrew's, Holborn, and St. Clement Danes*, 2 Salk. 606; 6 Mod. 287, *S. C.*; *Bac. Abr. Court of Sessions*; *Dick. Sess.* 13, 14, 375-6.)

Altering and amending the judgment.

No Court can make any alteration when once the judgment is solemnly entered on the record; if any material defect appear on the face of it, the judgment may be reversed by writ of error. (*R. v. Walcot*, 4 Mod. 395; 2 Salk. 632, *S. C.*)

If the judgment be passed in a Court below, and is erroneous, the Court of Queen's Bench cannot send it back to be amended (*R. v. Ellis*, 5 B. & C. 399, 400; 8 D. & R. 173, *S. C.*); but they may do so, if it be not there passed. (*R. v. Kenworthy*, 1 B. & C. 711; 3 D. & R. 173, *S. C.*)

See further as to amendments, tit. "*Amendment*," Vol. I.

*Reversal of Judgment.*]—The judgment, if erroneous, may be reversed, sometimes by plea, but more frequently by writ of error; and sometimes, in case of an attainder, by Act of Parliament. The mode of reversing a judgment by plea is so seldom adopted that it will not be here noticed. When adopted, it is generally in judgments of outlawry. (See 1 *Chit. C. L.* 743; tit. "*Process*," *post*.)

Reversal of judgment.

Upon a writ of error on an indictment for felony, the judgment must be reversed if an erroneous punishment is awarded; and formerly the Court above could neither send back the record to have the error corrected, nor could it award the proper punishment. (*Bourne v. Rex (in error)*, 2 Nev. & P. 248; 7 Ad. & Ell. 58, *S. C.*) But now, by the 11 & 12 Vict. c. 78, s. 5, the Court of Error may either pronounce the proper judgment or may remit the record to the Court below, in order that such Court may pronounce the proper judgment. (And see *Holloway v. Reg.*, 2 Den. C. C. 287, *ante*, 61.)

The grounds for reversal of a judgment by writ of error have been already cursorily noticed; the rest of the considerations relating to this proceeding are so purely practical that it is deemed best to omit them, as not exactly coming within the compass of this work. (See 1 *Chit. C. L.* 747 to 754.)

## **Jurors. (a)**

TRIAL by jury is the *Englishman's* birthright, and is that happy way of trial, which, notwithstanding all revolutions of times, hath been con-

Trial by jury.

(a) As to juries in general, see 1 *Chit. C. L. Index, Jurors*; and see the able and luminous judgment of Lord

*Tenterden*, on Juries, *R. v. Edmonds* (4 B. & Ald. 476).

1. Grand Jurors, etc.

tinued beyond all memory to this present day; the beginning whereof no history specifies, it being contemporary with the foundation of the state, and one of the pillars of it, both as to age and consequence. *Tri. per Pais*, 3; *Dalt.* c. 186; see *De Lolme*, 287; 3 *Blackst. Com.* 379.)

And this grand bulwark of the liberties of every *Englishman* is secured to him by the great charter: *Nullus liber homo capiatur, vel imprisonetur, aut exulatur, aut aliquo alio modo destruat, nisi per legale iudicium parium suorum vel legem terræ.*

And herein,

- I. *Grand Jurors, and the Qualifications of Jurors, and Exemptions from being*, p. 64.
- II. *Petit Jurors*, p. 69.
- III. *Special Jurors*, p. 70.
- IV. *Juries on Trials of Aliens*, p. 70.
- V. *Other Juries*, p. 71.
- VI. *List of Jurors*, p. 71.
- VII. *Summoning, Returning, Attendance, and Panel, etc.*, p. 77.
- VIII. *Challenge of Jurors*, p. 84.
  1. *Several kinds of Challenge*, p. 85.
  2. *Mode of making Challenge*, p. 90.
  3. *How Challenge to be tried*, p. 93.
- IX. *Talesmen*, p. 93.
- X. *Demeanour of Jurors, on giving their Verdict, etc.*, p. 94.
- XI. *Indemnity and Punishment of Jurors*, p. 99.
- XII. *Provisions of Jury Act as to Recovery of Penalties, Actions, etc.*, p. 103.
- XIII. *Saving Clauses in Jury Act*, p. 105.
- XIV. *Forms*, p. 105.

**I. Grand Jurors, and the Qualifications etc. of, and Exemptions from serving.**

What.

The *Grand Jury* consists of gentlemen selected out of the county by the sheriff, and returned by him to sessions of the peace, and commissions of oyer and terminer and of gaol delivery, to inquire, present, do, and execute all those things which, on the part of the Queen, shall then and there be commanded of them.

Number.

*Number of.*]—The grand jury must consist of twelve at least, and may contain any greater number not exceeding twenty-three, in order that twelve may form a majority of the jurors. (*Clyncard's case*, *Cro. Eliz.* 654; 2 *Hawk.* c. 25, s. 16; 2 *Burr.* 1088; *R. v. Marsh*, 6 *Ad. & Ell.* 236; 1 *N. & P.* 187, *S. C.*) For, if a number amounting to two full juries or more should be sworn, it might happen that a complete jury of twelve

might find a bill to be true, though other twelve or more of the same jury might reject it as untrue; which would be inconvenient and absurd. (2 Burr. 1088.)

It suffices if twelve of the grand jurors agree to the finding, though the rest disagree. (2 Hale, 161.)

*Qualifications of, and Exemptions from.*—The qualifications of grand and petit jurors are pointed out by the 6 Geo. 4, c. 50, s. 1, which enacts, "That every man (a), except as hereinafter excepted, between the ages of twenty-one years and sixty years, residing in any county in England, who shall have in his own name or in trust for him, within the same county, £10 by the year above reprises in lands or tenements, whether of freehold (b), copyhold, or customary tenure, or of ancient demesne, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents taken together, in fee simple, fee tail, or for the life of himself or some other person, or who shall have within the same county £20 by the year above reprises, in lands or tenements held by lease or leases for the absolute term of twenty-one years, or some longer term, or for any term of years determinable on any life or lives, or who being a householder shall be rated or assessed to the poor-rate, or to the inhabited house-duty in the county of Middlesex, on a value of not less than £30, or in any other county on a value of not less than £20, or who shall occupy a house containing not less than fifteen windows, shall be qualified and shall be liable to serve on juries for the trial of all issues joined in any of the King's Courts of record at Westminster, and in the superior Courts, both civil and criminal, of the three counties palatine, and in all Courts of assize, Nisi Prius, oyer and terminer, and gaol delivery, such issues being respectively triable in the county in which every man so qualified respectively shall reside, and shall also be qualified and liable to serve on grand juries in Courts of sessions of the peace, and on petty juries for the trial of all issues joined in such Courts of sessions of the peace, and triable in the county, riding, or division in which every man so qualified respectively shall reside; and that every man (except as hereinafter excepted) being between the aforesaid ages, residing in any county in Wales, and being there qualified to the extent of three-fifths of any of the foregoing qualifications, shall be qualified and shall be liable to serve on juries for the trial of all issues joined in the Courts of great sessions (c), and on grand juries in Courts of sessions of the peace, and on petty juries for the trial of all issues joined in such Courts of sessions of the peace, in every county of Wales in which every man so qualified as last aforesaid respectively shall reside."

1. *Grand Jurors, etc.*

Qualifications.

In Wales.

By sect. 2, "All peers; all judges of the King's Courts of record at Westminster and of the Courts of great session in Wales (c); all clergymen in holy orders; all priests of the Roman Catholic faith who

Exemptions from serving (d).

(a) The jury ought to be men; yet there shall be a jury of women, to try if a woman be *enceinte*, upon the writ de *inspiciendo*. *Tri. per Pais*, 86. See *R. v. Wycherly*, 8 Car. & P. 262.

(b) In *R. v. Anon. R. & R.* 177, decided before the passing of this Act, it was decided that grand jurors need not necessarily be freeholders.

(c) The Welsh judicature, etc., was abolished by the 1 Will. 4, c. 70.

(d) Every registrar of births and deaths, or marriages (7 Will. 4 & 1 Vict. c. 22, s. 18), every officer of the Post-Office (7 Will. 4 & 1 Vict. c. 33, s. 12; and see, *Ex parte Atkinson*, 2 Dougl. P. C. 773; 4 M. & Sc. 160),

every chief or other police constable (2 & 3 Vict. c. 93, s. 10), every metropolitan police magistrate, and their clerks, ushers, doorkeepers, and messengers (2 & 3 Vict. c. 71, s. 4), every commissioner of income-tax (5 & 6 Vict. c. 35, s. 35), every Chelsea or Greenwich out-pensioner, while enrolled (6 & 7 Vict. c. 95, s. 1, and 9 & 10 Vict. c. 9, s. 1), the chief and every other registrar, the accountant, the master, the official assignees, the messengers, and the ushers of the Court of Bankruptcy (12 & 13 Vict. c. 106, s. 47), every person registered under the provisions of the Medical Act, 1858 (21 & 22 Vict. c. 90), all registered

1. *Grand Jurors, etc.*

shall have duly taken and subscribed the oaths and declarations required by law; all persons who shall teach or preach in any congregation of Protestant Dissenters whose place of meeting is duly registered, and who shall follow no secular occupation except that of a schoolmaster, producing a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law; all serjeants and barristers at law actually practising; all members of the Society of Doctors of Law, and advocates of the civil law, actually practising; all attornies, solicitors, and proctors duly admitted in any Court of law or equity, or of ecclesiastical or admiralty jurisdiction in which attornies, solicitors, and proctors have usually been admitted, actually practising, and having duly taken out their annual certificates; all officers of any such Courts actually exercising the duties of their respective offices; all coroners, gaolers, and keepers of houses of correction; all members and licentiates of the Royal College of Physicians in London, actually practising; all surgeons being members of one of the Royal Colleges of Surgeons in London, Edinburgh, or Dublin, and actually practising; all apothecaries certificated by the Court of examiners of the Apothecaries' Company, and actually practising (*a*); all officers in his Majesty's navy or army on full pay; all pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne; and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed by the lord warden of the Cinque Ports, or under any Act of Parliament or charter for the regulation of pilots in any other port; all the household servants of his Majesty, his heirs and successors; all officers of Customs and Excise; all sheriffs' officers, high constables, and parish clerks, shall be and are hereby absolutely freed and exempted from being returned, and from serving upon any juries or inquests whatsoever, and shall not be inserted in the lists to be prepared by virtue of this Act as hereinafter mentioned: Provided also, that all persons exempt from serving upon juries in any of the courts aforesaid, by virtue of any prescription, charter, grant, or writ, shall continue to have and enjoy such exemption in as ample a manner as before the passing of this Act, and shall not be inserted in the lists hereinafter mentioned" (*b*).

Prescriptive exemptions.

Aliens (*c*).

Convicts, or out-laws, etc., disqualified.

Sect. 3. "No man, not being a natural-born subject of the King, is or shall be qualified to serve on juries or inquests, except only in the cases hereinafter expressly provided for; and no man who hath been or shall be attainted of any treason or felony, or convicted of any crime that is infamous, unless he shall have obtained a free pardon, nor any man who is under outlawry or excommunication, is or shall be qualified to serve on juries or inquests in any Court or on any occasion whatsoever."

Justices of peace.

Sect. 48. "No justice of the peace shall be summoned or impaneled as a juror, to serve at any sessions of the peace for the jurisdiction of which he is a justice."

Inhabitants of Westminster at sessions.

Sect. 49. "The inhabitants of the city and liberty of Westminster shall be and are hereby exempted from serving on any jury at the sessions of the peace for the county of Middlesex."

pharmaceutical chemists, and managing clerks to attorneys, solicitors, and proctors actually practising, and all subordinate officers in gaols or houses of correction (25 & 26 Vict. c. 107, s. 2), are exempt from serving on juries.

(*a*) See, as to the exemption of medical practitioners, the 21 & 22 Vict. c. 90, s. 35, *post*, tit. "Medical Prac-

tititioners."

(*b*) This proviso, so far as it relates to jurors in boroughs, is repealed by the 5 & 6 Will. 4, c. 76, s. 123, *post*, 67.

(*c*) See the 47th sect. *post*, 70. Alienage is only a ground for a challenge. See *R. v. Sutton*, 8 B. & C. 417; *S. C. nom. R. v. Despard*, 2 Man. & Ry. 406.

Sect. 50. "The qualification hereinbefore required for jurors, and the regulations for procuring lists of persons liable to serve on juries, shall not extend to the jurors or juries in any liberties, franchises, cities, boroughs, or towns corporate, not being counties, or in any cities, boroughs, or towns, being counties of themselves, which shall respectively possess any jurisdiction, civil or criminal; but that, in all such places, the sheriffs, bailiffs, or other ministers, having the return of juries, shall prepare their panels in the manner heretofore accustomed: Provided always, that no man shall be impaneled or returned by the sheriffs of the city of London, as a juror to try any issue joined in his Majesty's Court\* of record at Westminster, or to serve on any jury at the sessions of oyer and terminer, gaol delivery, or sessions of the peace, to be held for the said city, who shall not be a householder, or the occupier of a shop, warehouse, counting-house, chambers, or office, for the purpose of trade or commerce, within the said city, and have lands, tenements, or personal estate, of the value of £100; and that the lists of men resident in each ward of the city of London who shall be so qualified as herein mentioned shall be made out, with the proper quality or addition, and the place of abode of each man, by the parties who have heretofore been used and accustomed in each ward to make out the same respectively; and that such shop, warehouse, counting-house, chambers, or office as aforesaid, shall, for the purposes of this Act, be respectively deemed and taken to be the place of abode of every occupier thereof: Provided also, that no man shall be impaneled or returned to serve on any jury for the trial of any capital offence in any county, city, or place, who shall not be qualified to serve as a juror in civil causes within the same county, city, or place; and the same matter and cause being alleged by way of challenge, and so found, shall be admitted and taken as a principal challenge; and the person so challenged shall and may be examined on oath of the truth of the said matter."

### 1. *Grand Jurors, etc.*

Qualification of jurors in liberties, cities, and boroughs, to remain as before.

Qualification in London.

\* *Sic.*

Persons, unless qualified to serve as jurors in civil causes, not to be returned to serve on trials for capital offences.

The 5 & 6 Will. 4, c. 76, s. 121, enacts that every person, being a burgess of any borough, wherein there shall be a separate Court of sessions of the peace, or a Court of record for the trial of civil actions (unless he shall be exempt or disqualified otherwise than in respect of property from serving on juries by virtue of the 6 Geo. 4, c. 50), shall be qualified and liable to serve on grand juries in such borough, and also upon juries for the trial of all issues joined in any Court of quarter sessions of the peace, and in any Court of record for the trial of civil actions triable within the borough of which such person shall be a burgess. (See tit. "*Corporation*," Vol. I.)

In boroughs (a).

By s. 122, every member of the council for the time being of every borough (b), and every justice assigned to keep the peace therein, and the treasurer and town clerk for the time being of every borough, are exempt and disqualified from serving on any jury summoned within such borough, or in the county wherein such borough is situate; and all burgesses of every borough in and for which a separate Court of session of the peace shall be holden are exempt from serving on any jury summoned for the trial of issues joined in any Court of general or quarter sessions of the peace in the county wherein such borough is situate.

Exemptions in.

And by sect. 123, no person in any borough is to be exempt from serving on juries in any of the King's superior Courts of record at Westminster, or in the superior Courts, civil or criminal, of the counties palatine of

Prescriptive exemptions in boroughs abolished

(a) As to jurors for the united district formed by joining hundreds or other districts to a borough under the 5 & 6 Vict. c. 52, see s. 37 of that Act, tit. "*Gaols*," Vol. II.

(b) So much of this section as exempts or disqualifies members of the

council from serving on the *grand jury* at the borough sessions is repealed by the 16 & 17 Vict. c. 79, s. 6, as to all boroughs not containing 12,000 inhabitants according to the census of 1851.



### 1. *Grand Jurors, etc.*

Lancaster and Durham, or in any Court of assize, Nisi Prius, oyer and terminer, gaol delivery, or sessions of the peace, or in any other of the King's Courts, by virtue of any writ, grant, charter, prescription, or otherwise; and the section repeals so much of the 6 Geo. 4, c. 50, s. 2, as exempted such persons.

Quakers, Moravians, Separatists.

Quakers and Moravians formerly could not serve on juries; for they could not be sworn. (*R. v. Channens*, 1 *Moo. C. C.* 374.) But now they may serve; for they may take an affirmation instead of an oath. (3 & 4 Will. 4, c. 49, tit. "*Oaths*," *post*.) So may Separatists. (3 & 4 Will. 4, c. 82.) So may persons who have been, but have ceased to be, Quakers or Moravians. (1 & 2 Vict. c. 77.)

By the 6 & 7 Vict. c. 82, whenever, in any legal proceedings whatever, legal proceedings may be set out, it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation instead of oath, but it may be stated that they served as jurymen in the same manner as if no Act had passed for enabling persons to serve as jurymen without oath. (And see the 30 & 31 Vict. c. 35, s. 8, *post*, 70.)

Members of Barbers' Company.

The exemption from serving as jurymen claimed by the members of the Barbers' Company, under the charters of the 1 Ed. 4, & 5 Car. 1, and the stat. 18 Geo. 2, c. 15, does not extend to the Central Criminal Court, but is confined to the local Courts of the city of London, viz. those holden before the mayor, the sheriff, or the coroner. (*Re White*, 1 *C. & M.* 189.)

Jurors not compelled to attend twice, etc.

To prevent too much burthen being cast on persons by their frequent attendance on grand juries, the 6 Geo. 4, c. 50, s. 42, enacts, that no man shall be returned to serve on any grand jury, at any sessions of the peace in England or Wales, who has served as a juror on any such sessions, within one year before; in Wales, or in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or two years before in any other county, and has a certificate of the clerk of the peace of having so served; and a fine is to be imposed on the officer making a return of such person; but the provision does not extend to grand jurors at the assizes or great sessions.

Persons not named in warrant, etc.

No person shall be summoned but those named in the warrant, under a fine, to be imposed on the officer summoning. (6 Geo. 4, c. 50, s. 43, *post*, 83.)

It is said to be the practice at sessions, not to summon those who are on the sheriff's list to serve at the assizes. These exceptions are cases not of disqualification, but of privilege; and, therefore, any of the parties returned may lawfully serve without objection, if they take the oath required, and possess all other qualifications of grand jurymen.

If duly summoned, persons must attend and claim their privilege; for the sheriff cannot return it. (2 *Inst.* 448; *Tri. per Pais*, 87.)

Compelling attendance of.

*Mode of compelling attendance of.*—The mode of compelling the attendance of grand jurors is, in most respects, similar to the mode of compelling the attendance of petit jurors. As to which, see *post*, 77 *et seq.*

Mode of swearing, etc.

*Mode of swearing, etc.*—The grand jury are sworn diligently to inquire, and true presentment make, of all such matters and things as shall be given them in charge; to keep secret the Queen's counsel, their fellows', and their own; to present no one for envy, hatred, or malice, nor to leave any one unrepresented for fear, favour, or affection, or hope of reward; but to present all things truly as they come to their knowledge, according to the best of their understanding.

By the 30 & 31 Vict. c. 35, s. 8, a juror unwilling from conscientious motives to be sworn may make an affirmation; *post*, 70.

As to the charging the Grand Jury at the Sessions, see tit. "*Sessions*," Vol. V.; 1 *Chit. C. L.* 312, 313; at the Assizes, tit. "*Assizes*," Vol. I.; 1 *Chit. C. L.* 313.

*Time of Service.*—The grand jury usually serve the whole of the sessions or assizes. (2 *Hale*, 156.) But the Court may, in their discretion, command another grand jury to be returned and sworn; when this is done, it is usually where, before the end of the sessions or assizes, the grand jury, having brought in all their bills, are discharged by the Court, and, after that discharge, some new offence is committed, and the party taken and brought into gaol. (2 *Hale*, 156; 1 *Chit. C. L.* 314.) See the 42nd section of the 6 Geo. 4, c. 50, *ante*, 68.

**2. Petit Jurors.**

Time of service.

*Preferring Bills, etc., before.*—As to the mode of preferring bills of indictment before the grand jury, and the evidence, etc., and finding of the grand jury, see tit. "*Indictments*," *ante*, 36.

Preferring bill before.

The grand jury cannot regularly inquire of any fact done out of the county for which they are sworn, unless expressly empowered so to do by statute.

Where the grand jury have found a bill, the judge before whom the case comes to be tried ought not to inquire whether the witnesses were properly sworn before the jury; and it seems that an improper mode of swearing them will not vitiate the indictment, as the grand jury are at liberty to find a bill upon their own knowledge only. (*R. v. Russell*, 1 *C. & M.* 247. See *R. v. Dickinson*, *R. & R.* 401.)

If the grand jury at the assizes or sessions have ignored a bill, they cannot find another bill against the same person for the same offence at the same assizes or session; and, if such other bill be sent before them, they should take no notice of it. (*Reg. v. Humphreys*, 1 *Car. & M.* 601.)

The grand jury returned a bill of indictment which contained ten counts, for forging and uttering the acceptance of a bill of exchange, with an indorsement, "A true bill on both counts," and the prisoner pleaded to the whole ten counts. After the case for the prosecution had concluded, the prisoner's counsel pointed this out. The grand jury had been discharged; and the judge would not allow one of the grand jurors to be called as a witness to explain their finding. (*Reg. v. Cooke*, 8 *Car. & P.* 582.)

The Court of Queen's Bench will not receive an affidavit of a grand juror as to what passed in the grand jury room upon the subject of a bill of indictment. (*R. v. Marsh*, 6 *Ad. & El.* 236; 1 *N. & P.* 187, *S. C.*)

**II. Petit Jurors.**

The *petit jury* for the trial of issues consists of men of equal condition with the party indicted. Their general duty is to hear the evidence for and against the party indicted, to attend to the summing up of that evidence by the judge, with his comments upon it, and to give their verdict according to the evidence. (3 *Inst.* 30, 221.) By the 6 Geo. 4, c. 50, s. 13, the jury are to come from the body of the county, and not from any particular hundred.

Wnat.

The *petit jury*, when sworn, must consist of the number of twelve precisely. (2 *Hale*, 161; *R. v. Inhabitants of St. Michael, etc., Southampton*, 2 *Bl. Rep.* 719.) And they must all assent to the verdict. (*Ib.*)

Number.

The *qualifications* of *petit jurors*, and the exemptions from serving the office, are pointed out by the statute 6 Geo. 4, c. 50. They have been already noticed, *ante*, pp. 65–68, while treating of grand jurors.

Qualifications.

When the jury is completed, they are sworn separately, in criminal cases, as follows:—"You shall well and truly try, and true deliverance make, between our sovereign lady the Queen and the prisoner at the bar,

Oath of.

4. *Juries on Trials of Aliens, etc.*

whom you shall have in charge, and a true verdict give, according to the evidence. So help you God."

By the 30 & 31 Vict. c. 35, s. 8, if any person summoned or required to serve as a juror in any civil or criminal proceeding shall refuse or be unwilling from alleged conscientious motives to be sworn, it shall be lawful for the Court or judge or other presiding officer or person qualified to administer an oath to a juror, upon being satisfied of the sincerity of such objection, to permit such person, instead of being sworn, to make his or her solemn affirmation or declaration in the words following:

"I, A. B., do solemnly, sincerely, and truly affirm and declare that the taking of any oath is, according to my religious belief, unlawful; and I do also solemnly, sincerely, and truly affirm and declare," etc.

Which solemn affirmation and declaration shall be of the same force and effect, and if untrue shall entail all the same consequences, as if such person had taken an oath in the usual form; and, whenever in any legal proceedings it is necessary or usual to state or allege that jurors have been sworn, it shall not be necessary to specify that any particular juror has made affirmation or declaration instead of oath, but it shall be sufficient to state or allege that the jurors have been "sworn or affirmed."

### III. Special Jurors.

Special juries.

Special juries are usually had when the matters to be tried are of too great a nicety for common jurors.

As to the mode of obtaining a special jury, their qualification, etc., see the 6 Geo. 4, c. 50, ss. 30-36.

### IV. Juries on Trials of Aliens, etc.

*Juries de medietate.*

Aliens and denizens are entitled to demand a jury *de medietate linguæ*.

By the 6 Geo. 4, c. 50, s. 47, "Nothing herein contained shall extend, or be construed to extend, to deprive any alien indicted or impeached of any felony or misdemeanour, of the right of being tried by a jury *de medietate linguæ*, but that, on the prayer of every alien so indicted or impeached, the sheriff or other proper minister shall, by command of the Court, return for one-half of the jury a competent number of aliens, if so many there be in the town or place where the trial is had, and, if not, then so many aliens as shall be found in the same town or place, if any; and that no such alien juror shall be liable to be challenged for want of freehold or of any other qualification required by this Act; but every such alien may be challenged for any other cause, in like manner as if he were qualified by this Act." (See 1 *Chit. C. L.* 525-6.)

If such a jury be not returned, on an indictment against an alien or a denizen, it will, as it seems, be ground for the defendant to challenge the array; though it is said that the more proper time for demanding the benefit is upon pleading, and the proper mode of proceeding thereupon to enter a suggestion upon the record that the defendant is an alien, and praying that a *venire de medietate linguæ* may be returned. (See *Rust. Entr.* 204; 2 *Dy.* 144 b; 2 *Hawk. P. C.* 43, s. 35; 2 *Hale, P. C.* 271; *R. v. D'Eon*, 1 *Bl. Rep.* 517; *Reg. v. Manning*, 1 *Den. C. C.* 467.) If the defendant omits to claim this advantage until after the jury are sworn, he cannot legally take any exception in any subsequent stage of the proceedings. (See 2 *Hale, P. C.* 271; 2 *Rob. Abr.* 643; 1 *Dy.* 28 a; 2 *Dy.* 144-145 a.)

Whether an alien who is indicted jointly with a British subject for a

felony thereby loses the privilege of being tried by a jury *de medietate lingue, quere.* (See *Swendsen's case*, 14 S. Tr. 559; *Barre's case*, Moore, 557; *Reg. v. Manning*, 1 Den. C. C. 467.)

A foreign woman who marries a natural born subject of this realm, or person naturalized, is, under the 7 & 8 Vict. c. 66, s. 15, naturalized to all intents and purposes by the marriage, and therefore cannot, if indicted jointly with her husband, claim to be tried by a jury *de medietate lingue.* (*Reg. v. Manning, supra.*)

6. *Lists of Jurors.*

## V. Other Juries.

It is said by some books, that any person happening to be present at a court-leet, or to be riding by the place where it is holden, may, for the want of jurors, be compelled by the steward to be sworn, whether he be resident within the precinct of the leet or not; by which it seems to be implied, that any person whatsoever is capable of being put upon the jury in a court-leet. (2 *Hawk.* c. 10, s. 68.)

In the leet.

The coroner's jury, upon inquest taken before him, are to be of the neighbouring towns; but no qualification by estate is required by any statute. (2 *Hale*, 152. See tit. "*Coroner*," Vol. I.)

On the coroner's inquest.

By the 8 Hen. 6, c. 9, jurors to inquire of forcible entry or detainer shall have lands or tenements of 40s. a year.

On inquiries of forcible entry.

Upon the writ *de ventre inspiciendo* the jury ought to be of women. (*Tri. per Pais*, 86; see *R. v. Wycherly*, 8 Car. & P. 262.)

*De ventre inspiciendo.*

## VI. Lists of Jurors.

By the 25 & 26 Vict. c. 107, s. 4, "the clerk of the peace in every county, riding, and division in England and Wales, shall, on or before the 20th day of July in every year, issue his precept (in the form set forth in the schedule to this Act, or as near thereto as may be) to the churchwardens and overseers of the poor of the several parishes, and to the overseers of the poor of the several townships within the county, riding, or division for which he acts, requiring them to make out, before the 1st day of September then next ensuing, a true list of all men residing within their respective parishes and townships, qualified and liable to serve on juries according to the principal Act, and also to perform and comply with all other the requisitions in the said precepts contained, and shall forward the same, together with a competent number of printed forms of returns for the use of the respective persons by whom such returns are to be made, by post, in a registered letter, having the words "Jury Precept" legibly written or printed on the outside thereof, and addressed to the churchwardens and overseers as aforesaid; and every precept delivered or tendered as a registered letter at the address of the person to whom it is addressed, whether a receipt be given for the same or not, shall be deemed to have been served on the person to whom the same was so delivered or tendered, and, if delivered or tendered to any one churchwarden or overseer of a parish or township, shall be deemed to have been served on the whole of the churchwardens and overseers of such parish or township."

Clerk of the peace to issue precepts to parish officers by post.

By sect. 14, that Act is not to alter or affect the mode of procedure theretofore pursued in making out of jury lists in the City of London.

By the 6 Geo. 4, c. 50, s. 5, "Every such clerk of the peace shall cause a sufficient number of warrants (a), precepts, and returns to be printed,

Clerk of the peace to annex printed forms of

(a) No warrant is now necessary. 25 & 26 Vict. c. 107, s. 4.

6. *Lists of Jurors.*

precepts and returns to his warrants.

Justices of division may order any extra-parochial place to be annexed to any adjoining parish or township, for the purposes of this Act.

Churchwardens and overseers to make out lists of persons qualified to serve on juries, with their residences, titles, etc. (b).

Lists to be fixed on church doors,

according to the several forms set forth in the schedule hereunto annexed, at the expense of the county, riding, or division, and shall annex to every warrant a competent number of precepts and returns, for the use of the respective persons by whom such precepts are to be issued and such returns to be made."

By the 25 & 26 Vict. c. 107, s. 5, the provisions of the 6 Geo. 4, c. 50, as to the expense of printing the warrants, precepts, and returns therein mentioned, are to apply to the printing of the precepts and returns required by that Act; and the precepts and jury lists required to be posted and registered by that Act, are to be posted and registered at the expense of the county, riding, or division.

By the 6 Geo. 4, c. 50, s. 7, "It shall be lawful for the justices of the peace of any division in England or Wales, at a special petty sessions to be holden for that purpose before the 1st day of July in any year, to make an order for annexing any extra-parochial place, whenever they shall think it expedient, to any parish or township adjoining thereto, for the purposes of this Act; and a copy of such order shall, within five days from the making thereof, be served upon the churchwardens and overseers of such adjoining parish, or upon the overseers of such adjoining township; and such extra-parochial place shall from thence continually be deemed and taken, for all the purposes of this Act, to be within and to form an integral part of such parish or township; and the churchwardens and overseers of such parish, and the overseers of such township, shall and they are hereby respectively authorized and required to make out, according to this Act, a true list of all men qualified and liable to serve on juries as aforesaid, residing as well in their own respective parish or township, as in the extra-parochial place thereto annexed, and shall from time to time perform and execute within such extra-parochial place for the purposes of this Act, but for no other purpose, all and every the same acts, duties, powers, and authorities, as in their own respective parish or township, and shall be as fully liable to the same penalties for the non-performance thereof within such extra-parochial place, as if they had in every instance been mentioned in this Act with reference to such extra-parochial place."

Sect. 8. "The churchwardens (a) and overseers of every parish, and the overseers of every township within the meaning of this Act, shall forthwith, after the receipt of such precept from the high constable (c), prepare and make out in alphabetical order a true list of every man residing within their respective parishes or townships, who shall be qualified and liable to serve on juries as aforesaid, with the Christian and surname written at full length, and with the true place of abode, the title, quality, calling, or business, and the nature of the qualification of every such man, in the proper columns of the form of return set forth in the schedule hereunto annexed."

Sect. 9. "The churchwardens and overseers of each parish, and the overseers of each township, having made out according to this Act a list

(a) A churchwarden whose year of office has expired continues in office when his successor has been elected, but has not been sworn, nor has made the substituted declaration, nor has done any act which would make him churchwarden *de facto*. Such churchwarden is, therefore, bound to sign the jury lists under this section, and is liable to penalties under sect. 45, if he does not sign them. (*Bray v. Somer*, 31 L. J., M. C. 135.)

(b) By the 25 & 26 Vict. c. 107,

s. 6, the duties of the churchwardens and overseers are to remain unchanged, although they will, in pursuance of the provisions of that Act, receive the precept from the clerk of the peace and not from the high constable.

(c) By the 25 & 26 Vict. c. 107, s. 6, this section is to be read as if the words "clerk of the peace" had been substituted for the words "high constable."

of every man qualified and liable to serve on juries as aforesaid, shall, on the three first Sundays in the month of September, fix a true copy of such list upon the principal door of every church, chapel, and other public place of religious worship within their respective parishes or townships, having first subjoined to every such copy a notice, stating that all objections to the list will be heard by the justices of the peace at a time and place to be mentioned in such notice, and having also signed their names at the foot of such copy, and shall likewise keep the original list, or a true copy thereof, to be perused by any of the inhabitants of their respective parishes or townships at any reasonable time during the three first weeks of the month of September without any fee or reward, to the end that notice may be given of men qualified who are omitted, or of men inserted who ought to be omitted out of such list; and the churchwardens and overseers of each parish, and the overseers of each township, are hereby authorized to cause a sufficient number of copies of such lists for the purposes aforesaid to be printed at the expense of their respective parishes or townships."

Sect. 10. "The justices of the peace in every division in England and Wales shall hold a special petty sessions for the purposes herein mentioned, within the last seven days of September in every year, on some day and at some place of which notice shall be given by their clerk before the twentieth day of August next preceding to the high constable (a) and to the churchwardens and overseers of every parish, and to the overseers of every township, within such division; and the churchwardens and overseers of each parish, and the overseers of each township, shall then and there (b) produce the list of men qualified and liable to serve on juries as aforesaid within their respective parishes or townships, by them prepared and made out as hereinbefore directed, and shall answer upon oath such questions touching the same as shall be put to them or any of them by the justices then present; and, if any man, not qualified and liable to serve on juries as aforesaid, is inserted in any such list, it shall be lawful for the said justices, upon satisfaction from the oath of the party complaining, or other proof, or upon their own knowledge that he is not qualified and liable to serve on juries, to strike his name out of such list, and also to strike thereout the names of men disabled by lunacy or imbecility of mind, or by deafness, blindness, or other permanent infirmity of body, from serving on juries; and it shall also be lawful for such justices to insert in such list the name of any man omitted therein, and likewise to reform any errors or omissions which shall appear to them to have been committed in respect to the name, place of abode, title, quality, calling, business, or the nature of the qualification of any man included in any such list: Provided always, that no man's name, if omitted, shall be inserted in such list, nor shall any error or omission in the description of any man in such list be reformed by the said justices, unless upon the application of such men respectively, or unless such men respectively shall have had notice that an application for such purpose would be made to the justices at such petty sessions, or unless the said justices at such sessions, or any two of them, shall cause notice to be given to such men respectively, requiring them to show cause, at some adjournment of such petty sessions to be holden within four days thereafter, why their names should not be inserted in such list, or why any error or omission in the description of such men in such list should not be reformed; and, when every such list shall be duly corrected at such sessions, or at such adjournment thereof, it shall be allowed by the justices present, or two of them, at such

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and also kept by churchwardens for inspection.

Lists to be reviewed and allowed, etc., at petty sessions to be held in the last week of September.

Petty sessions not to alter any list without notice to the party to be affected by the alterations.

Power of adjournment.

Lists to be allowed.

(a) By the 25 & 26 Vict. c. 107, s. 7, this notice is no longer to be sent to the high constable.

(b) By the 25 & 26 Vict. c. 107, s.

8, the justices may adjourn the petty sessions for the production of any list not sent in time.

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Justices' clerk to send jury lists to clerk of the peace.

sessions or such adjournment, who shall sign the same, with their allowance thereof."

By the 25 & 26 Vict. c. 107, s. 9, "It shall be the duty of the clerk to the justices of the peace in every petty sessional division in England and Wales to take charge of the jury lists of each parish and township within such division, when and as soon as they shall have been allowed and signed by the said justices, as by the principal Act provided, and to forward the same by the next available post in a registered letter or letters, with the words 'jury list' legibly written or printed on the outside thereof, addressed to the clerk of the peace for the county, riding, or division, at his office, together with a schedule of the parishes and townships for which jury lists have been then allowed, which schedule shall be signed by one of the said justices; and the clerk to the justices shall be entitled to the fee of two shillings and sixpence, to be paid out of the county rate, for the discharge of the duties hereby imposed upon him."

Tax assessments and poor-rates to be inspected.

By the 6 Geo. 4, c. 50, s. 11, "The respective churchwardens and overseers of every parish, and the overseers of every township, shall, for their assistance in completing the lists pursuant to the intent of this Act, (upon request made by them or any of them, at any reasonable time between the 1st day of July and the 1st day of October in every year, to any collector or assessor of taxes, or to any other officer having the custody of any duplicate or tax assessment for such parish or township), have free liberty to inspect any such duplicate or assessment, and take from thence the names of such men qualified to serve on juries, dwelling within their respective parishes or townships, as may appear to them or any of them to be necessary or useful; and every Court of petty sessions and justice of the peace shall, upon the like request to any collector or assessor of taxes, or any other officer having the custody of any duplicate or tax assessment, or to any churchwarden or churchwardens, or overseer or overseers having the custody of any poor-rate within their respective divisions, have the like free liberty to inspect and make extracts from any such duplicate, tax assessment, or poor-rate, for the purpose of assisting them in the reformation and completion of the jury lists within their respective divisions."

Lists to be kept by clerk of peace, and copied into a book to be delivered to sheriff.

Sect. 12. "The clerk of the peace shall keep the lists, so returned by the high constable (a) to the Court of quarter sessions, among the records of the sessions, arranged with every hundred in alphabetical order, and every parish or township within such hundred likewise in alphabetical order, and shall cause the same to be fairly and truly copied in the same order, in a book to be by him provided for that purpose at the expense of the county, riding, or division, with proper columns for making the register hereinafter directed, and shall deliver the same book to the sheriff of the county, or his under sheriff, within six weeks next after the close of such sessions; which book shall be called, 'The Jurors' Book for the Year \_\_\_\_\_'; (inserting the calendar year for which such book is to be in use); and that every sheriff on quitting his office shall deliver the same to the succeeding sheriff; and that every jurors' book so prepared shall be brought into use on the 1st day of January after it shall be so delivered by the clerk of the peace to the sheriff or his under sheriff, and shall be used for one year then next following."

Book to be called 'The Jurors' Book.'

Sheriff to deliver it to his successor.

To be used for one year from 1st January.

Penalties on churchwardens and overseers for neglecting to make out lists, etc.

Sect. 45. "If any churchwarden or overseer of any parish, or any overseer of any township within the meaning of this Act, shall refuse or neglect (unless prevented by sickness) to assist in making out any list required by this Act, so that the same shall not be made out at the time

(a) Under the 25 & 26 Vict. c. 107, s. 9, the lists will now be returned by

the justices' clerk instead of the high constable.

and in the manner hereinbefore directed; or shall wilfully omit out of such list any man whose name ought to be inserted therein, or shall wilfully insert therein the name of any man who ought to be omitted, or shall take any money or other reward for omitting or inserting\* any man whatsoever, or shall wilfully insert therein a wrong description of the name, place of abode, title, quality, calling, business, or the nature of the qualification of any man; or shall refuse or neglect, in case the number of forms of return delivered by the high constable shall be insufficient, to apply to the high constable for a sufficient number, so that the list may be made out at the time and in the manner hereinbefore directed; or shall refuse or neglect to fix a copy of such list duly signed, or to subjoin thereto such notice as hereinbefore required, on the principal door of any church, chapel, or other public place of religious worship within their respective parishes or townships, on any of the Sundays on which the same ought to be so fixed; or shall refuse to allow any inhabitant of their respective parishes or townships to inspect such list, or a true copy thereof, *gratis*, at any reasonable time during the three weeks hereinbefore mentioned; or shall, on due notice, refuse or neglect to produce such list at such petty sessions as aforesaid, or to answer on oath such questions touching the same as shall there be put, or to attend at such petty sessions, or any such adjournment thereof as aforesaid; or shall refuse to allow the said petty sessions, or any justice of the peace, upon due request, to inspect or make any extracts from the poor-rate of any parish or township within their respective divisions, for the purposes hereinbefore mentioned, such rate being in the custody of the party so refusing; every such churchwarden or overseer offending in any of the foregoing cases shall, for every such offence, forfeit a sum not exceeding 10*l.*, nor less than 40*s.*, at the discretion of the justice before whom he shall be convicted; and the justice before whom such offender shall be convicted of any such offence of wrongful insertion or omission, shall forthwith, in writing under his hand, certify the same to the clerk of the peace of the county, riding, or division in which the man or men so wrongfully omitted or inserted shall reside; and the said clerk of the peace shall cause the list in which such wrongful insertion or omission shall have occurred to be corrected according to such certificate, and shall also give notice thereof to the sheriff or under sheriff, who shall correct the jurors' book accordingly."

Sect. 46. "If any clerk of the peace shall refuse or neglect to cause a sufficient number, either of warrants (*a*), precepts, or forms of return, to be printed, in the manner hereinbefore directed, or shall refuse or neglect to issue and deliver to any high constable within the meaning of this Act the warrant and precepts as hereinbefore directed, or to annex to the same such a number of the forms of return as he shall *bonâ fide* deem sufficient, or to deliver to any high constable such additional number thereof as he may apply for, within three days after such application; or shall refuse or neglect to provide or prepare a jurors' book, within the time or in the manner and form hereinbefore prescribed, or to deliver the same to the sheriff or under sheriff of the county within the time hereinbefore prescribed, or to give notice to the sheriff or under sheriff of any wrongful insertion or omission, certified to him by any justice of

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6 Geo. 4, c. 50.

\* *Sic.*

Penalties on clerks of peace and sheriffs neglecting their duty.

(*a*) By the 25 & 26 Vict. c. 107, ss. 3 & 4, no warrant will any longer be necessary, and it will be the duty of the clerk of the peace to send the precepts direct to the churchwardens or overseers; and by the same Act, s. 10, "The duties of the clerk of the peace with reference to the jury lists so forwarded to him by the clerks to

the justices, and the penalties to which he is liable for making default therein, shall be in all respects the same as if this Act had not passed, and the said Lists had been returned by the high constables to the Court of quarter sessions under the provisions of the principal Act."



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6 Geo. 4, c. 50.

the peace as aforesaid, or to deliver to any man, who shall have been summoned, and have duly attended or served as a grand juror or petty juror, at the sessions of the peace, a certificate of such man's service, on his application and payment as aforesaid, or to transmit to the sheriff or under sheriff a list of the men who shall have been so summoned, and have so attended or served within the time and in the manner hereinbefore directed; or if any clerk of any such petty sessions, to be holden as aforesaid, shall refuse or neglect to give due notice thereof to any high constable, or to the churchwardens or overseers of any parish, or to the overseers of any township within such division; or if any sheriff or under sheriff (a) of a county shall make or cause to be made any alteration whatsoever in the list of jurors contained in the juror's book, except in consequence of the conviction of the churchwarden or overseer hereinbefore provided for; or if any sheriff or under sheriff of a county, or any sheriff or secondary of London, shall neglect or refuse to provide or prepare a list of special jurors in the manner and within the time hereinbefore prescribed, or shall wilfully write or cause to be written therein the name of any person not qualified, or shall wilfully omit thereout the name of any person duly qualified as a special juror, or shall neglect or refuse to write, or cause to be written, the several numbers contained in such list upon distinct pieces of parchment or card, in the manner and within the time hereinbefore prescribed, or shall subtract or destroy, or by any default or neglect lose, any of the said pieces of parchment or card, or shall neglect or refuse, upon discovery of such loss, to supply the same within five days; or if any sheriff or under sheriff of a county shall refuse or neglect to prepare, or keep for inspection as aforesaid, a copy of the panel in the cases hereinbefore provided for, or to register the service of any juror as hereinbefore directed, or to deliver to any man who shall have been summoned, and have duly attended or served as a juror at any Court of assize, Nisi Prius, oyer and terminer, or gaol delivery, or in any of the said Courts of the three counties palatine or great sessions (b), a certificate of such man's service, on his application and payment as aforesaid; or shall refuse or neglect, within ten days after the next succeeding sheriff shall be sworn into or have entered upon office, to deliver over to him, as well all the jurors' books and lists that shall be made or prepared in the year of his sheriffalty, as also all such other like books and lists as were prepared in the sheriffalty of any of his predecessors, within four years then next preceding, and which were delivered over to him by any of his predecessors; every such clerk of the peace, clerk of the petty sessions, sheriff or under sheriff, sheriff of London or secondary, offending in any of the said cases, shall, for every such offence, forfeit the sum of 50*l.*, one moiety whereof shall be to the use of his Majesty, his heirs and successors, and the other moiety, with full costs, to such person as shall sue for the same in any of his Majesty's Courts of record at Westminster, by action of debt, bill, plaint, or information, wherein no essoin, protection, or wager of law, nor more than one imparlance shall be allowed."

Expenses of jury lists may be paid out of poor-rates.

By the 7 & 8 Vict. c. 101, s. 60, the costs, charges, and expenses, properly incurred by the officers of the parish in making out, preparing, printing, and collecting the lists of persons qualified to serve on juries and relating thereto, shall be paid and allowed to them out of the poor-rates of the parish.

(a) An acting under sheriff who is not the under sheriff nominated pursuant to the 3 & 4 Will. 4, c. 90, s. 5, is not liable to these penalties as

under sheriff. (*Williams v. Thomas*, 4 *Exch.* 479.)

(b) The Welsh judicature is abolished by the 1 Will. 4, c. 70.

## VII. Summoning, Returning, and Attendance of Jurors, Views, and Copy of Panel, etc.

7. Summoning, Attendance of, etc.

By a clause in the commission of the peace it is said, "We command our sheriff that at certain days, which you (the justices) shall make known to him, he cause to come before you so many and such good and lawful men of his bailiwick (as well within the liberties as without) by whom the truth shall be the better known and inquired into."

Clause in commission, as to.

The kind of process to be issued, in order to summon a jury, differs, according to the Court from whence it is awarded. In some Courts there must be a particular precept to the sheriff; in others a general precept will suffice, or the whole may be merely a command to the sheriff to return a jury *ore tenus*. (1 *Chit. C. L.* 506.)

The Courts of Queen's Bench or gaol delivery are of the latter description, and may have a panel returned by the sheriff, without any writ to warrant the process. (9 *Co. Rep.* 1184; 4 *Harg. St. Tr.* 742; 1 *Chit. C. L.* 506.)

It seems that a jury may not regularly be returned before justices of the peace in their sessions by a bare award of the Court, as before justices of gaol delivery; but that there ought to be a particular *precept* in the nature of a *venire* to the sheriff for that purpose (a). (2 *Hawk. c.* 41, s. 1.)

The justices of gaol delivery may also issue process at common law returnable on the day in which it is awarded. (4 *Inst.* 164; 2 *Hawk. c.* 41, s. 4.)

The commissioners of oyer and terminer, it seems, might do so; though some contend that, if invested with power under that commission only, they must allow fifteen days between the date and the return. (2 *Keb.* 212, 292; 2 *Hawk. c.* 41, s. 4; 1 *Chit. C. L.* 513.)

But justices of the peace, except in case of felony, or where the party is in prison, or consents to waive the formality, cannot, it seems, issue the *venire* returnable in a shorter time. (2 *Hawk. c.* 41, s. 4; *Keilw.* 159; 1 *Chit. C. L.* 513.) Though, in those excepted cases, they may, and commonly do, try within a more limited period. (*R. v. Browne*, 1 *Sid.* 335; *Chapman's case*, *Cro. Car.* 340; 2 *Hawk. c.* 41, s. 1.)

In cases of felony it is agreed (4 *Inst.* 164), and is the usual practice, after the prisoners are arraigned and have pleaded to the country, for the justices to issue a precept to the sheriff, in nature of a *venire facias*, which may bear teste the same day that the prisoners plead, commanding the sheriff to return twenty-four jurors to try the issue upon such a day; or they may make it returnable the same day that the prisoner pleads, as at the hour of one in the afternoon, or the like; and this precept must be in the name and under the seals of the justices or two of them (one being of the quorum), and not barely upon the award of the roll. (2 *Hale*, 261, 262.)

An indictment at the quarter sessions contained two counts, one charging a stealing of monies above the value of 5*l.* in a dwelling-house, the other charging simply a stealing of monies of the same description as those contained in the first. The jury process directed the jury to be summoned to inquire if the prisoners were guilty of the felony in the indictment specified; and the verdict found them guilty of the felony aforesaid. Upon that verdict they were adjudged to be transported for fourteen years. The judgment was reversed in the Queen's Bench, with a direction that a *venire de novo* should be awarded by the sessions; and it was held by the Court of Error, first, that the jury process had been mis-

(a) And so, it seems, justices of oyer and terminer must award such particular precept. (*Id.* 1 *Chit. C. L.* 508.)

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awarded in the first instance, and therefore a *venire de novo* had been properly awarded by the Queen's Bench, and that it was no objection that judgment had been given upon the prisoners by the sessions. (*Campbell v. Reg. (in error)*, 11 Q. B. 799; 17 L. J., M. C. 89.)

The *distingas* must be tested on the day on which the *venire* is returnable; and, if it be tested on the following or any subsequent day, the proceedings will be discontinued. (*R. v. Tuchin*, 2 Ld. Raym. 1061; 1 Salk. 51, S. C.)

The process should, in general, be directed to the sheriff, and executed and returned by the same officer. But, where the sheriff is either an actual party, or is so nearly related to the prosecutor or defendant as that he cannot be presumed impartial, the process is to be directed to the coroners, or to such of them as may be presumed free from bias; and if none of them can be regarded as proper, then to two elisors named by the Court, and to whom, for that reason, no objection can be admitted to prevail. (See 1 Chit. C. L. 515; 2 Hawk. c. 9, s. 45.)

In a case where the panel of tales was granted in a special jury case on the ground of interest in the sheriff, it was held that a *venire facias* was properly awarded to the coroner, although two of the special jurymen appeared and were sworn on the former occasion. (*R. v. Dolby*, 2 B. & C. 105; 3 D. & R. 311, S. C.)

If there be two sheriffs for one county, and one of them be partial, the writ must be directed to the other, and not remitted to the coroners, who are only employed when there is a total inability in the superior officers, which cannot be the case when there is one impartial sheriff. (*R. & Reg. v. Warrington*, 1 Salk. 152; 1 Chit. C. L. 516.)

So, if the under sheriff be a party concerned, the writ may be directed to the high sheriff, with a proviso that the former shall not interfere in its execution. (*Bac. Abr. Juries*, (B 3).)

As to summoning of jurors in a liberty or franchise, see *R. v. Jaram*, 4 B. & C. 692.

The sheriff makes no formal return to the general precept issued to summon jurors on a commission of gaol delivery; but the return to it is by a panel or panels, the title of which does not name any particular prisoner. (4 Harg. St. Tr. 745.)

The sheriff must personally make a return to the process, and shew that he complied with its requisitions. (2 Hale, 264.)

At adjourned sessions.

It was formerly open to doubt whether jurors could be compelled to attend at an adjourned quarter-sessions; but it is now by the 1 & 2 Vict. c. 4, declared and enacted that they shall.

In boroughs.

As to the summoning and returning of jurors in boroughs within the Municipal Corporation Act, see the 5 & 6 Will. 4, c. 76, s. 121, and the 7 Will. 4 & 1 Vict. c. 78, s. 36, tit. "*Corporations*," Vol. I.

Provisions of 6 Geo. 4, c. 50.

We will now notice some of the provisions of the 6 Geo. 4, c. 50, as to the summoning and returning of jurors.

Form of *venire facias*,

SECT. 13. "Every writ of *venire facias juratores* (a) for the trial of any issue whatsoever, whether civil or criminal, or on any penal statute, in any of the Courts in England or Wales hereinbefore mentioned, shall direct the sheriff to return twelve (b) good and lawful men of the body of his county, qualified according to law, and the rest of the writ shall proceed in the accustomed form; and that every precept to be issued for the return of jurors before Courts of oyer and terminer, gaol delivery, the superior criminal courts of the three counties palatine, and Courts

and of precept for jurors at gaol deliveries, and sessions of the peace.

(a) This writ is now abolished. See the 15 & 16 Vict. c. 76, s. 104, *post*, 84.

(b) In the case of *grand jurors*, the general precept that issues before a

session is, to return twenty-four, and commonly the sheriff returns upon that precept forty-eight. (2 Hale, 263.)

of sessions of the peace in England, and before the Courts of great sessions and sessions of the peace in Wales (*a*), shall in like manner direct the sheriff to return a competent number of good and lawful men of the body of his county, qualified according to law, and shall not require the same to be returned from any hundred or hundreds, or from any particular venue within the county; and that the want of hundreds shall be no cause of challenge, any law, custom, or usage to the contrary notwithstanding."

Sect. 14. "Every sheriff, upon the receipt of every such writ of *venire facias* (*b*) and precept for the return of jurors, shall return the names of men contained in the jurors' book for the then current year, and no others; and that, where process for returning a jury for the trial of any of the issues aforesaid shall be directed to any coroner, elisor, or other minister, he shall have free access to the jurors' book for the current year, and shall, in like manner, return the names of men contained therein, and no others; Provided always that, if there shall be no jurors' book in existence for the current year, it shall be lawful to return jurors from the jurors' book for the year preceding."

A new panel of seventy-two jurors may be ordered by the judge to be summoned during the assizes; and a conviction of felony by a jury selected therefrom is valid. (*R. v. Cropper*, 2 *Moody*, C. C. R. 18.)

Sect. 20. "The Court of King's Bench, and all Courts of oyer and terminer, gaol delivery, the superior criminal Courts of the three counties palatine, and Courts of sessions of the peace in England, and all Courts of great sessions and sessions of the peace in Wales (*c*), shall respectively have and exercise the same power and authority as they have heretofore had and exercised in issuing any writ or precept, or in making any award or order, orally or otherwise, for the return of a jury for the trial of any *issue* before any of such Courts respectively, or for the amending or enlarging the panel of jurors returned for the trial of any such issue; and the return to every such writ, precept, award, or order, shall be made in the manner heretofore used and accustomed in such Courts respectively, save and except that the jurors shall be returned from *the body of the county*, and not from any hundred or hundreds, or from any particular venue within the county, and shall be qualified according to this Act." This enactment seems to recognize the right of a Court of quarter sessions to order the sheriff to return a jury immediately as well in misdemeanours as felonies, which was formerly open to doubt.

Sect. 21. "When any person is indicted for high treason or misprision of treason, in any Court other than the Court of King's Bench, a list of the petit jury, mentioning the names, professions and places of abode of the jurors, shall be given at the same time that the copy of the indictment is delivered to the party indicted, which shall be ten days before the arraignment, and in the presence of two or more credible witnesses; and, when any person is indicted for high treason or misprision of treason in the Court of King's Bench, a copy of the indictment shall be delivered within the time and in the manner aforesaid; but the list of the petit jury, made out as aforesaid, may be delivered to the party indicted at any time after the arraignment, so as the same be delivered ten days before the day of trial: Provided always, that nothing herein contained shall anyways extend to any indictment for high treason, in compassing and imagining the death of the King, or for misprision of such treason,

7. *Summoning, Attendance of, etc.*

Want of hundredsors.

Juries to be returned from jurors' book, by sheriff and by coroners and elisors.

Juries in all criminal courts to be returned as before.

Copy of the panel to be delivered to parties indicted for high treason.

Exceptions.

(*a*) The 1 Will. 4, c. 70, abolishes the Welsh judicature.

(*b*) These writs are now abolished. See the 15 & 16 Vict. c. 76, s. 104,

*post*, 84.

(*c*) The 1 Will. 4, c. 70, abolishes the Welsh judicature.

7. *Summoning, Attendance of, etc.*

6 Geo. 4, c. 50.

Judge of assize, etc., may direct the same panel for the criminal and civil sides, and may direct two sets of jurors to be summoned, one to attend at the beginning of each assize, and the other to attend the residue thereof, to serve indiscriminately on the criminal and civil side.

Summons shall be made out either for the first or second set.

In case of views, the judge to appoint trial during the attendance of the viewers.

where the overt act or overt acts of such treason alleged in the indictment shall be assassination or killing of the King, or any direct attempt against his life, or any direct attempt against his person, whereby his life may be endangered or his person may suffer bodily harm; or to any indictment of high treason for counterfeiting his Majesty's coin, the great seal or privy seal, his sign manual or privy signet; or to any indictment of high treason, or to any proceedings thereupon, against any offender or offenders who by any Act or Acts now in force is and are to be indicted, arraigned, tried, and convicted, by such like evidence and in such manner as is used and allowed against offenders for counterfeiting his Majesty's coin." (See the 5 & 6 Vict. c. 51, tit. "*Treason*," Vol. V.)

Sect. 22. "In any county in which the justices of assize in England, or the justices of the superior Courts of the said counties palatine, or the judges of the great sessions in any county of Wales (*a*), shall think fit so to direct, the sheriff, or other minister, to whom the return of the *venire facias juratores*, or other process for the trial of causes at Nisi Prius, doth belong, shall summon and impanel such number of jurors, not exceeding one hundred and forty-four, as such judges or justices respectively shall think fit to direct, to serve indiscriminately on the criminal and civil side; and that, where such judges or justices respectively shall so direct, the sheriff, or other minister, shall divide such jurors equally into two sets, the first of which sets shall attend and serve for so many days at the beginning of each assize or great sessions, as such judges or justices respectively shall, within a reasonable time before the commencement of such assize or great sessions respectively, think fit to direct, and the other of which sets shall attend and serve for the residue of such assize or great sessions: Provided always, that such sheriff or other minister shall, in the summons to the jurors in each of such sets, specify whether the juror named therein is in the first or second set, and at what time the attendance of such juror will be required; and the sheriff, or other minister, to whom the return of the *venire facias juratores*, or other process for the trial of causes at Nisi Prius, doth belong, shall, upon his return of every such writ or process, annex thereto a panel, containing the names alphabetically arranged, together with the additions and places of abode of the jurors in each of such sets; and, during the attendance and service of the first of such sets, the jury on the civil side shall be drawn from the names of the persons in that set, and, during the attendance and service of the second of such sets, from the names of the persons in such second set: Provided always that, in any case wherein an order for a view shall have been obtained as hereinafter mentioned, it shall be lawful for the judge before whom such case is to be tried, and he is hereby required, on the application of the party obtaining such order, to appoint such case to be tried during the attendance and service of that set of jurors in which the viewers, or the major part of them, are included (*b*)."

(*a*) See note (*a*), *ante*, 79.

(*b*) The usual way of granting views now is on the parties entering into a rule by consent, that in case no view be had (as if no jurors attend), or if a view be had by any of the jurors, (though not being six of the first twelve), yet the trial shall proceed, and no objection be made on account thereof, or for want of a proper return. (1 Burr. 256.) The Court will only under particular circumstances grant a view in an indictment for perjury; but a view will be refused

if there be any risk of misleading the jury. (*Anon.*, 2 Chit. 422.) In an information for duties, against the proprietors of a glass manufactory, the Court of Exchequer will not grant a view of the premises, where the question may be tried by the production of a model. (*Att.-Gen. v. Green*, 1 Price, 130.) Where, on the trial of a rape, it was wished on the part of the prisoner that the jury should see the place at which the offence was said to have been committed, and the place was so near to the Court that

Sect. 23. "Where in any case, either civil or criminal, or on any penal statute, depending in any of the said Courts of record at Westminster, or in the counties palatine, or great sessions in Wales (a), it shall appear to any of the respective Courts, or to any judge thereof in vacation, that it will be proper and necessary that some of the jurors who are to try the issues in such case should have the view of the place in question, in order to their better understanding the evidence that may be given upon the trial of such issues, in every such case, such Court, or any judge thereof in vacation, may order a rule to be drawn up, containing the usual terms, and also requiring, if such Court or judge shall so think fit, the party applying for the view to deposit in the hands of the under sheriff a sum of money to be named in the rule, for payment of the expenses of the view, and commanding special writs of *venire facias*, *distringas*, or *habeas corpora* to issue (b), by which the sheriff, or other minister, to whom the said writs shall be directed, shall be commanded to have six or more of the jurors named in such writs, or in the panels thereto annexed (who shall be mutually consented to by the parties, or, if they cannot agree, shall be nominated by the sheriff, or such other minister as aforesaid), at the place in question, some convenient time before the trial, who then and there shall have the place in question shewn to them by two persons (c) in the said writs named, to be appointed by the Court or judge; and the said sheriff, or other minister, who is to execute any such writ, shall, by a special return upon the same, certify that the view hath been had according to the command of the same, and shall specify the names of the viewers."

7. *Summoning, Attendance of, etc.*

Where jurors are to view lands, etc., Court may order special writs of *venire facias*, *distringas*, or *habeas corpora*.

Sect. 24. "Where a view shall be allowed in any case, those men who shall have had the view, or such of them as shall appear upon the jury to try the issue, shall be first sworn; and so many only shall be added to the viewers who shall appear, as shall, after all defaulters and challenges allowed, make up a full jury of twelve."

Viewers, in case of appearance, to be sworn upon the jury first.

Sect. 25. "The summons of every man to serve on juries, not being special juries, in any of the Courts aforesaid, shall be made by the proper officer, ten days at the least before the day on which the juror is to attend, by showing to the man to be summoned, or, in case he shall be absent from the usual place of his abode, by leaving with some person there inhabiting a note in writing, under the hand of the sheriff or other proper officer, containing the substance of such summons; and the summons of every man to serve on special juries in any of the Courts aforesaid shall be made by the like persons and in the like manner as aforesaid, three days at the least before the day on which the special juror is to attend: Provided always, that this Act shall not require any longer time for summoning any jurors in the city of London or county of Middlesex than has been heretofore by law required, nor shall give any longer time for the return of any writ of *venire facias*, *habeas corpora*, or *distringas*, than has been heretofore by law required; but that, where there shall not be ten days between the awarding of such writ and the return thereof, every juror may be summoned, attached, or distrained, to appear at the day and time therein mentioned, as he might heretofore have been."

Jurors to be summoned ten days before the day of attendance;

and for special jurors, three days

Time for summoning jurors for London, etc., as heretofore.

By the 25 & 26 Vict. c. 107, s. 11, "Any person liable to serve on any

the jury could have a view without inconvenience, the judge allowed a view, although the prosecutor did not consent to it. (*Reg. v. Whalley*, 2 C. & K. 376.)

(a) The 1 Will. 4, c. 70, abolishes the Welsh judicature.

(b) These writs are abolished by VOL. III.

the 15 & 16 Vict. c. 76, s. 104; and see *Ib.* s. 115, *post*, 84.

(c) The costs of a view cannot be allowed, unless the writ contain the name of a shewer appointed by the plaintiff as well as defendant. (*Taylor v. Thompson*, 7 Bing. 403; 5 M. & P. 255; 1 Dowl. P. C. 218, S. C.)

7. *Summoning, Attendance of, etc.*

All jurors may be summoned by post.

jury may be summoned as heretofore, or in the manner following; that is to say, the sheriff or other proper officer may make out a summons and affix the seal of his office thereto, and such summons, having the words 'jury summons' legibly written or printed on the same side as the address, may be sent open by the post, prepaid, and directed to the person so required to serve as juror at his place of abode as described in 'the jurors' book,' which said summons, together with a duplicate endorsed with the name and address of the juror to whom the original summons is directed, shall be taken to the postmaster of any post office where money orders are received or paid, within such hours as shall have been previously agreed upon at such post office, and under such regulations with respect to the registration of such summons and the fee to be paid for such registration (which fee shall in no case exceed twopence over and above the ordinary rate of postage) as shall from time to time be made by the postmaster-general in that behalf; and, in all cases in which such fee shall have been duly paid, the postmaster shall compare the address of the said summons with that of the duplicate, and on being satisfied that they are alike shall forward the summons to its address by the post, and shall return the duplicate to the party bringing the same, duly stamped with the stamp of the said post office; and the production by the party who posted such summons of such stamped duplicate shall be evidence of the summons having been delivered at the dwelling house of the person whose name and address is thereon endorsed, at the place mentioned in such endorsement, on the day on which such summons would, in the ordinary course of post, have been delivered, provided it shall appear that the same was not returned by the post office as undelivered; and any summons sent by the post as before mentioned, and not so returned as undelivered, shall be considered in all respects as duly served; and in the event of any person to whom any summons shall be addressed being ascertained to be dead, or to have permanently left the place to which such summons is addressed, the postmaster or letter-carrier of the place in which the summons shall then be, shall endorse thereon the reason of the non-delivery thereof, and forward the same in the usual course of post to the returned letter office in *London*, in order that it may be returned to the sender: provided always that, when any summons shall be served by post under the provisions of this Act, two additional days shall be allowed for the transmission of such summons by post, over and above the number of days required by law for the service of a summons, before the day on which the juror is required to attend."

Sheriffs to be allowed costs of summonses.

Sect. 13. "The costs incurred by any sheriff in summoning jurors by post under the provisions of this Act, so far as the same shall not exceed the sum allowed to such sheriff, or his predecessor in office, on that account, in any one year within the three years immediately preceding the passing of this Act, may be included in his ordinary bill of cravings, and shall be allowed by the commissioners of her Majesty's treasury."

Extent of Act. Jury lists to be made, etc., in the city of London as before.

Sect. 14. "This Act shall not extend to *Scotland* or *Ireland*; and nothing in this Act contained shall alter or affect the mode of procedure heretofore pursued in the making out of jury lists or the summoning of jurors in the city of *London*."

The jury process must be sent to the sheriff in the case of common jurors ten days, and in the case of special jurors three days, at the least, before the commission day at the assizes. (*Charlton v. Burfit*, 1 M. & Scott, 450.)

The 6 Geo. 4, c. 50, s. 26 relates to the mode of balloting for juries in Courts of assize or Nisi Prius.

Sect. 39 indemnifies the sheriff in returning any unqualified person not liable. If the sheriff returns one not in the jurors' book, or if the clerk of assize records appearances when the party did not appear, they may be fined.

Sect. 40. The sheriff is to register the names of jurors who have served, and to give certificates.

7. *Summoning, Attendance of, etc.*

Sect. 41. "The clerk of the peace, at every sessions of the peace to be holden for any county, riding, or division, in England or Wales, shall make out a list of such men as shall be summoned, and shall attend to serve, on any grand jury or petty jury at such sessions, together with their respective places of abode and additions, and the date of their services, and shall, within twenty days after the close of every such sessions, transmit such list to the sheriff or under sheriff of the county, who is hereby required forthwith to register the names of the men included in such list in the proper columns of the jurors' book for that purpose, together with the date of their services; and every man so summoned, and having duly attended or served until discharged by the Court of sessions, shall upon application by him made to such clerk of the peace, before he shall depart from the place where the sessions are holden, receive a certificate, testifying such his service, which certificate the said clerk of the peace is hereby required to give, on payment of 1s."

Clerk of peace to make out a list of all who serve at sessions, on grand or petty juries, and transmit same to sheriff, to be registered in jurors' book.

Certificates of services to be given by clerk of peace.

Sect. 42. "No man shall be returned as a juror to serve at any session of Nisi Prius or of gaol delivery, in the county of Middlesex, who has served as a juror at either of such sessions in the said county in either of the two terms or vacations next immediately preceding, and has the sheriff's certificate of having so served; and no man shall be returned as a juror to serve on trials before any Court of assize, Nisi Prius, oyer and terminer, or gaol delivery, or any of the said Courts of the three counties palatine, or the said great sessions, who has served as a juror at any of such Courts within one year before in Wales (a) or in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or four years before in the county of York, or two years before in any other county, and has the sheriff's certificate of having so served; and no man shall be returned to serve upon any *grand jury* or petty jury at any sessions of the peace to be holden for any county, riding, or division in England or Wales, who has served as a juror at any such session within one year before in Wales or in the counties of Hereford, Cambridge, Huntingdon, or Rutland, or two years before in any other county, and has the certificate of the clerk of the peace of having so served; and, if any sheriff or other minister shall wilfully transgress in any of the cases aforesaid, the Court may, and is hereby required, on examination and proof of every such offence in a summary way, to set such fine upon every such offender as the Court shall think meet: Provided, that nothing herein contained shall extend to grand jurors at the assizes or great sessions, or to special jurors."

Jurors not to be summoned again within certain periods to assizes.

Nor to quarter sessions.

Sect. 43. "No sheriff, under sheriff, coroner, elisor, bailiff, or other officer or person whatsoever, shall, directly or indirectly, take or receive any money or other reward, or promise of money or reward, to excuse any man from serving or from being summoned to serve on juries, or under any such colour or pretence (b); and no bailiff or other officer

No money to be taken to excuse persons from serving.

(a) The Welsh judicature is abolished by the 1 Will. 4, c. 70.

(b) In *R. v. Whitaker*, (2 Cowp. 752), the defendant was summoning bailiff to the sheriff of Middlesex, and it was his province to summon jurors to attend to try causes. An attachment was granted against him, upon a charge of *demanding* and *receiving* money from several of the inhabitants to excuse them from serving,

and for summoning such as refused to pay him more frequently than it came to their turn. Being examined upon interrogatories, it appeared to the Court, upon the report of Sir *James Burrow*, that he admitted having received small sums from several individuals; that in some years he had received in the whole about £60 or £70; and in every year something, though sometimes not more than £20.



8. *Challenges.*

None to be summoned but those named in the warrant.

appointed by any sheriff, under sheriff, coroner, or elisor, to summon juries, shall summon any man to serve thereon other than those whose names are specified in a warrant or mandate signed by such sheriff, under sheriff, coroner, or elisor, and directed to such bailiff, or other officer; and, if any sheriff, under sheriff, coroner, elisor, bailiff, or other officer, shall wilfully transgress in any of the cases aforesaid, or shall summon any juror, not being a special juror, less than ten days before the day on which he is to attend, or shall summon any special juror less than three days before the day on which he is to attend, except in the cases hereinbefore excepted, the Court of assize, Nisi Prius, oyer and terminer, gaol delivery, great sessions, or superior Court of the said counties palatine, or Court of sessions of the peace, within whose jurisdiction the offence shall have been committed, may, and is hereby required, on examination and proof of such offence in a summary way, to set such a fine upon every person so offending as the Court shall think meet, according to the nature of the offence."

Penalties for neglect of duty of officers.

As to the penalties and punishment of officers for neglect of duty in summoning, etc., jurors, see the 45th and subsequent sections of the Act, *ante*, 74.

By the 15th & 16th Vict. c. 76, it is enacted as follows:—

Jury process abolished.

Sect. 104. "The several writs of *venire facias juratores*, and *distringas juratores*, or *habeas corpora juratorum*, and the entry *jurata ponitur in respectu* shall no longer be necessary or used."

Precept by judges of assize.

Sect. 105. "The precept issued by the judges of assize to the sheriff, to summon jurors for the assizes, shall direct that the jurors be summoned for the trial of all issues, whether civil or criminal, which may come on for trial at the assizes; and the jurors shall thereupon be summoned in like manner as at present."

Printed panel to be prepared.

Sect. 106. "A printed panel of the jurors summoned shall, seven days before the commission day, be made by the sheriff, and kept in the office for inspection; and a printed copy of such panel shall be delivered by the sheriff to any party requiring the same, on payment of one shilling, and such copy shall be annexed to the Nisi Prius Record."

Proceedings to be the same as before.

Sect. 115. "The jurors contained in such panels as aforesaid shall be the jurors to try the causes at the assizes and sittings for which they shall be summoned respectively; and all such proceedings may be had and taken before such juries in like manner, and with the like consequences in all respects, as before any jury summoned in pursuance of any writ or writs of *venire facias juratores*, *distringas juratores* or *habeas corpora juratorum*, before this Act."

## VIII. Challenge of Jurors.

Challenge of jurors.

When the jurors are called, either party is at liberty to challenge them; either the whole panel, or any individual of the panel.

And herein,—

But he *denied* ever having *demand*ed it, or having ever been guilty of *partiality*, either in excusing those who paid him, or in summoning those more frequently than he ought to have done who refused to pay him. He swore he received it only as a *Christmas-box*, which had been customary, and in no other view whatever, and positively denied that he ever acted with any partiality in consequence of

its being given or refused. The Court thought this to be a very bad practice, and of very evil example; wherefore they fined him £200, and ordered him to be committed till paid. They added, that the sheriff should be informed of this, and that it should be recommended to him to discharge this man from his office of summoning bailiff.

1. *Of the several Kinds of Challenge*, p. 85.
2. *How the Challenge is to be taken*, p. 90.
3. *How the Challenge shall be tried*, p. 93.

## 8. Challenges.

## 1. SEVERAL KINDS OF CHALLENGE.

There are two kinds of challenge; either to the *array*, by which is meant the whole jury as it stands *arrayed* in the *panel*, or little square *pane* of parchment on which the jurors' names are written; or to the *polls*, by which are meant the several particular persons or *heads* in the *array*. (1 *Inst.* 156, 158.)

Two kinds of challenge.

*To the Array.*]—Challenge to the *array* is in respect to the partiality or default of the sheriff, coroner, or other officer that made the return; And this is twofold—

To the array.

1. Principal challenge to the array; which, if it be made good, is a sufficient cause of exemption, without leaving anything to the judgment of the triers.

Principal challenge to the array.

Causes of challenge of this sort are such as these: if the sheriff, or other officer, be of kindred or affinity to the plaintiff or defendant, if the affinity continue. (See *post*, 88.) If any one or more of the jury be returned at the nomination of the party, plaintiff or defendant, the whole array shall be quashed. If the plaintiff or defendant have an action of battery against the sheriff, or the sheriff against either party, this is a good cause of challenge. So, if the plaintiff or defendant have an action of debt against the sheriff; but otherwise it is, if the sheriff have an action of debt against either party; or, if the sheriff have parcel of the land depending upon the same title; or, if the sheriff, or his bailiff which returned the jury, be under the distress of either party; or, if the sheriff or his bailiff be either of counsel, attorney, officer, or servant of either party, gossip, or arbitrator in the same matter, and treated thereof. (1 *Inst.* 156.)

By the 6 Geo. 4, c. 50, s. 28, "No challenge shall be taken to any panel of jurors for want of a knight's being returned in such panel, nor any array quashed by reason of any such challenge; any law, custom, or usage to the contrary notwithstanding."

By the same Act, (s. 13), the want of *hundredors* shall be no cause of challenge. (See the section, *ante*, 78; and the former law on this subject, *Co. Litt.* 125, etc.)

There can be no challenge to the array on the ground of unindifference in the Master of the Crown Office, he being the officer of the Court expressly appointed to nominate the jury. The only remedy in such a case is to apply to the Court by motion to appoint some other officer to nominate the jury. (*R. v. Edmonds*, 4 B. & Ald. 471.)

The Master of the Crown Office, in nominating the jury, selected the names of the jurors, and did not take them by chance from the freeholders' book. He also took those only whose names had the addition of "Esquire," or of some higher degree; and included some persons who were in the commission of the peace: the Court of King's Bench held, that, in so doing, he was perfectly right. He also included in his nomination some persons who, as grand jurymen, had found the indictment, and persisted in his opinion as to their sufficiency, unless the Crown would consent to abandon them; which was done, and others were then substituted in their places. The Court of King's Bench held that he was wrong in his opinion, but that there was no ground for presuming partiality. (*Ib.*)

The sheriff's officer had neglected to summon one of the twenty-four special jurymen returned on the panel. The Court of King's Bench held, that this was no ground of challenge to the array for unindifference on the part of the sheriff. (*Ib.*)

A grand juror who found the bill ought not, it seems, to be on the

8. Challenges. jury. (*Ib.*; *Cook's case*, 13 *How. St. Tr.* 339; *R. v. Sullivan*, 1 *Per. & D.* 96; 8 *Ad. & El.* 31.)

There can be no challenge to the array, when the process has been directed to elisors. (*Co. Litt.* 158 a.)

As to challenges on the trials of aliens, on account of the jury not being partly constituted of aliens, see *ante*, 70.

The subject may challenge the array against the Queen; as, in traverse of an office, he that traverseth may challenge the array; and so it is in case of life. (1 *Inst.* 156.)

And, where a subject may challenge the array for unindifferency, there the Queen, being a party, may also challenge for the same cause. (1 *Inst.* 156.) A challenge to the array must be formally tendered before the jury are sworn. (*Brunskill v. Giles*, 2 *M. & Scott*, 41; 9 *Bing.* 13, *S. C.*)

The person challenging the array must be prepared strictly to prove the cause (*R. v. Savage*, *R. & M. C. C.* 51); and he cannot, if he omit challenging, take any advantage afterwards. (*R. v. Sheppard*, 1 *Leach*, 101; *R. v. Sutton*, 8 *B. & C.* 417; *S. C. nom. R. v. Despard*, 2 *M. & R.* 406.)

The array challenged on both sides shall be quashed. (1 *Inst.* 156.)

Challenge to the array for favour.

2. Challenge to the array for favour.—He that taketh this must shew in certain the name of him that made it, and in whose time, and all in certainty. This kind of challenge, being no principal challenge, must be left to the discretion and conscience of the triers. As, if the plaintiff or defendant be tenant to the sheriff, this is no principal challenge, but he may challenge for favour, and leave it to trial. So affinity between the son of the sheriff and the daughter of the party, and the like, is no principal challenge, but to the favour; but, if the sheriff marry the daughter of either party, or the like, this (as hath been said) is a principal challenge. (1 *Inst.* 156.)

But, where the Queen is party, one shall not challenge the array for favour; because, in respect of his allegiance, he ought to favour the Queen more. But, if the sheriff be a menial servant of the Queen, there the challenge is good. (1 *Inst.* 156.) By which it seems to be meant, that such challenge is not good without shewing some actual partiality in the sheriff. (2 *Hawk. c.* 43, s. 32.)

But the Queen may challenge the array for favour. (1 *Inst.* 156.)

To the polls.

*To the Polls.*—Challenge to the polls is threefold:—

Peremptory challenge.

1. Peremptory.—This is so called, because a person may challenge peremptorily, upon his own dislike, without shewing any cause.

Not allowed to the Queen.

This peremptory challenge shall not be allowed to the Queen. The 6 *Geo. 4. c.* 50, s. 29, which is a re-enactment of the previous law on the subject (*R. v. Frost*, 9 *C. & P.* 136), provides, "That in all inquests to be taken before any of the Courts hereinbefore mentioned, wherein the King is a party, howsoever it be, notwithstanding it be alleged by them that sue for the King, that the jurors of those inquests, or some of them, be not indifferent for the King, yet such inquests shall not remain untaken for that cause; but, if they that sue for the King will challenge any of those jurors, they shall assign of their challenge a cause certain, and the truth of the same challenge shall be inquired of according to the custom of the court; and it shall be proceeded to the taking of the same inquisitions, as it shall be found if the challenges be true or not, after the discretion of the Court; and that no person arraigned for murder or felony shall be admitted to any peremptory challenge above the number of twenty."

Number allowed.

When allowed against the Queen.

And this peremptory challenge is not allowable to the party against the Queen, but only in cases of treason or felony, in favour of life. (1 *Inst.* 156.)

Nor is a peremptory challenge allowed in the trial of collateral issues; (*Fost.* 42; 3 *M.S. Sum.* 158); nor in any trial for a misdemeanour. (*Reading's case*, 7 *Howell's St. Tr.* 265; *Titus Oates's case*, 10 *Howell's St. Tr.* 1079. See also *Christian's Note* to 4 *Blackst. Com.* 353.)

In any treason the prisoner has his common-law right of peremptorily challenging thirty-five. (See the 1 & 2 P. & M. c. 10.)

If several prisoners are jointly indicted, and join in their challenges, they can only challenge the limited number in the whole; but, if they are tried separately, then each of them may challenge the whole number. (*R. v. Charnock*, 3 *Salk.* 81.)

A prisoner, in a case of felony, having challenged twenty jurors peremptorily, cannot withdraw one of these challenges to challenge another juror, instead of one that he had previously challenged. (*R. v. Parry*, 7 *C. & P.* 836.)

The right to a peremptory challenge of jurors to the number of twenty exists in all cases of felony, and is not confined to those which are punishable capitally. (*Gray v. Reg.*, 11 *Cl. & Fin.* 427.)

If the party challenge above the proper number, he shall not have judgment of death, but his challenge shall be overruled, and he shall be put upon his trial. (*Hale's P. C. Sum.* 259; 2 *Hale*, 270.)

And by the 7 & 8 Geo. 4, c. 28, s. 3, it is enacted, "That if any person, indicted for any treason, felony, or piracy, shall challenge peremptorily a greater number of the men returned to be of the jury than such person is entitled by law so to challenge in any of the said cases, every peremptory challenge beyond the number allowed by law in any of the said cases shall be entirely void, and the trial of such person shall proceed as if no such challenge had been made."

In case of felony after a prisoner has challenged twenty of the jurors peremptorily, he may still examine any other of the jurors who are subsequently called as to the qualification. (*R. v. Geach*, 9 *C. & P.* 499.)

2. Principal challenge to the polls is where cause is shewn, but which, if found true, stands sufficient of itself, without leaving anything to the triers.

Every challenge beyond the legal number shall be void.

Principal challenge.

Causes of principal challenge to the polls are such as these:—

A peer is not to be sworn on juries; and he may be challenged by either party, or may bring a writ of privilege for his discharge. (1 *Inst.* 156; 2 *Hawk.* c. 43, s. 11. See *ante*, 65, and *Ld. Headley's case*, *R. & R.* 117.)

Peer sworn.

Want of freehold has been held a good cause of challenge. (1 *Inst.* 156.) But this is now otherwise by the 6 Geo. 4, c. 50, s. 27, *post*, 90.

Estate.

Also, if a person be an alien. (*R. v. Sutton*, 8 *B. & C.* 417; *S. C. nom. R. v. Despard*, 2 *M. & R.* 406; 1 *Inst.* 156. And see the 6 Geo. 4, c. 50, s. 3, *ante*, 66.) And by the 27th section of that Act, it seems alienage is not a ground even of challenge to a special juror. (*R. v. Sutton*, 3 *B. & C.* 417; 2 *M. & R.* 406, *S. C.*)

Alienage.

If the juror be within the age of twenty-one, it is a good cause of challenge. (1 *Inst.* 157.) So, if a female. (*Ante*, 65.)

Age.  
Female.

If a juror be above the age of sixty, (the age limited by the 6 Geo. 4, c. 50, s. 1, *ante*, 65), or be sick, or be non-resident in the country, he may sue out a writ of privilege for his discharge; but, if he be returned and appear, he can neither be challenged by the party, nor excuse himself from serving, if there be not enough without him. (2 *Hawk.* c. 43, s. 26.)

If the juror be of blood or kindred to either party, this is a principal challenge; for that the law presumeth that one kinsman doth favour another, before a stranger; and how far remote soever he is of kindred, yet the challenge is good. (1 *Inst.* 157.)

Kindred.

8. Challenges.

Not allowed in collateral issues, or misdemeanours.

8. *Challenges.* If, during the trial of a case of felony, it be discovered that the prisoner has a relation on the jury, this is no ground for discharging the jury, and the case must proceed. (*Reg. v. Wardle*, 1 C. & M. 647.)

*Affinity.* Affinity, or alliance by marriage, is a principal challenge, if the same continue, or issue be had; otherwise it is but to the favour. (1 *Inst.* 157.)

*Godfathers.* If the juror be godfather to the child of the plaintiff or defendant, or they to his child, this is allowed to be a good challenge, in our books. (*Ib.*)

*Interest in title.* If a juror hath part of the land that dependeth upon the same title, it is a principal challenge. (*Ib.*)

*Prejudice.* It hath been allowed a good cause of challenge, on the part of the prisoner, that the juror hath declared his opinion beforehand, that the party is guilty, or will be hanged, or the like. (2 *Hawk.* c. 43, s. 28.)

But expressions used by a juryman previous to the trial are not a cause of challenge, unless they can be referred to something of personal illwill towards the party challenging. (*R. v. Edmonds*, 4 B. & Ald. 492; 2 *Hawk.* c. 43, s. 28.)

*Malice.* Actions brought by the juror against either of the parties, or by either of the parties against him, which imply malice or displeasure, are causes of principal challenge; other actions which do not imply malice or displeasure are but to the favour. (1 *Inst.* 157.)

*Prior verdict by the juror.* Likewise, if a juror gave a verdict before for the same cause or upon the same title or matter, though between other persons. (1 *Inst.* 157.)

But it is not a ground of challenge that a juror on other trials has not found a verdict for the Crown. (*R. v. Sawdon*, 2 *Lewin*, 117.)

*Indictor.* So, likewise, one may be challenged, that he was indictor of the plaintiff or defendant in the same cause; for such a one, it may be thought, will not falsify his former oath. (*Lamb.* 554. And see *R. v. Edmonds*, 4 B. & Ald. 471.) And, if a grand juryman who was one of the indictors in the same cause be returned upon the petit jury, and do not challenge himself, he shall be fined. (2 *Hale*, 309.)

*Juror having been an arbitrator in the cause.* If a juror hath been an arbitrator chosen by the plaintiff or defendant in the same cause, and hath been informed thereof or treated of the matter, this is a principal challenge; otherwise, if he were chosen indifferently by either of the parties. (1 *Inst.* 157.)

*Counsel, etc.* If he be of counsel, servant, or of fee of either party, it is a principal challenge. (1 *Inst.* 157.)

Also, if a juryman, before he be sworn, take information of the case, this is a cause of challenge. (2 *Hale*, 306.)

But it is no cause of challenge by the counsel for the prosecution, in case of felony, that the juror is a client of the prisoner who is an attorney. (*R. v. Geach*, 9 C. & P. 499.)

Nor that the juror has visited the prisoner as a priest since he has been in prison. (*Ib.*)

*Eating and drinking at the cost of a party.* If any, after he be returned, do eat and drink at the charge of either party, it is a principal cause of challenge. (1 *Inst.* 157.)

But it is not a principal challenge to a juror, but only to the favour, that the prosecutor was lately entertained at his house. (*Anon.*, 3 *Salk.* 81.)

*Parishioner.* In a cause where the parson of the parish is party, and the right of the church cometh into debate, a parishioner is a principal challenge. (*Ib.* See 2 n.)

On the trial of an indictment for a riot, it is ground for the prosecutor's challenging a juror that he is an inhabitant of the town where the riot occurred, and that he has taken an active part in the matter which led to it. (*Reg. v. Swain*, 2 M. & Rob. 112.)

8. Challenges.

If either party labour the juror, and give him anything to give his verdict, this is a principal challenge; but, if either party labour the juror to appear and to do his conscience, this is no challenge at all, but lawful for him to do it. (1 *Inst.* 157.)

Labouring a juror.

That the juror is a fellow-servant with either party is no principal challenge, but to the favour. (1*b.*)

Fellow-servant.

If the juror be attainted or convicted of treason or felony, or for any offence to life or member, or in attain for a false verdict, or for perjury as a witness, or in a conspiracy at the suit of the Queen, or in any suit (either for the Queen or for any subject) be adjudged to the pillory, tumbrel, or the like, or to be branded or stigmatized, or to have any other corporal punishment, whereby he becometh infamous; these, and the like, are principal causes of challenge. (1 *Inst.* 158; and see now the 6 Geo. 4, c. 50, s. 3, *ante*, 66.)

Attainder or conviction.

So it is, if a man be outlawed in trespass, debt, or any other action; for he is *ex lege*, and, therefore, not a lawful man. (1 *Inst.* 158.)

Outlawry.

But it is no objection that a juror has been sworn by a wrong Christian name, either in a criminal or a civil case. An instance of the former kind occurred at Newcastle in 1783, where, after the business of the Crown side was over, it was discovered that Robert Curry, who served upon the jury, had answered to the name of Joseph Curry in the sheriff's panel, and had been sworn by that name. On further inquiry it appeared that there was a person of the name of Joseph Curry, belonging to Newcastle, but not at that time resident within the county; that Robert Curry was qualified to serve on juries, and had been summoned by the bailiffs to attend on the Crown side as a jurymen at these assizes. All this was mentioned to Mr. Baron *Eyre*, who, conceiving it only to amount to a misnomer in the panel of the jurymen intended to be returned, and who did serve, and that it was but cause of challenge, which, on being stated, would instantly have been rectified by altering the panel, and that after judgment it could not be assigned as error, did not incline to interpose on the ground of a supposed irregularity in the proceedings. However, on being pressed by the counsel, the judge thought fit to respite the execution of a convict for forgery until the Michaelmas Term following, that he might have an opportunity of mentioning the case to the rest of the judges. And on the first day of Michaelmas Term, 1783, the judges were unanimously of opinion that there was no ground for the objection if a writ of error were brought, and much less upon a summary application. (*The case of a jurymen*, 12 *East*, 231, n.)

Wrongly sworn.

And in a civil case of *Wray v. Thorn*, (M. 18 Geo. 2), the Court of Common Pleas refused to set aside a verdict and grant a new trial, because one of the jurors was named Henry in the *venire*, the *habeas corpora*, and the *postea*, his real Christian name being Harry. (*Willes*, *Rep.* 488.)

However, where Richard Shepherd served in the jury on a civil case, not having been returned on the Nisi Prius panel, but having answered to the name of Richard Geator, who was returned, the Court of Common Pleas set aside the verdict and awarded a new trial. (*Norman v. Beamont*, *Willes*, *Rep.* 484.)

But in *Hill v. Yates*, (E. 50 Geo. 3), where the son of a person returned upon the panel had answered to his father's name when called, and had served upon the jury, it was moved in the Court of King's Bench as a ground for setting aside the verdict and having a new trial; and the

8. *Challenges.* cases of *Newman v. Beaumont* and *Wray v. Thorn* were cited; but the Court refused to grant the rule, and adverted to the case of *Curry*, as in point. (12 *East*, R. 229.) This case is, however, of doubtful authority; for in a case where a person named William Maynard, not summoned to serve on a jury at Nisi Prius, answered to the name of Thomas Russell, for whom a summons directed to "Russell, or the inhabitants of the house," was delivered, and to whose house he had succeeded, the objection having been made before the verdict was taken, a *venire de novo* was awarded. (*Dovey v. Hobson*, 2 *Marsh.* 154; 6 *Taunt.* 460, *S. C.*)

Again, in *Rex v. Tremearne* (5 *B. & C.* 254), which was also a case of personation, the same course was followed as in *Dovey v. Hobson* (*ubi supra*), although the mistake was not discovered till after verdict.

So, too, where upon the trial of a prisoner for murder, the name of Joseph Henry Thorne was called from the jury panel as a juror to try him, when William Thorneley, who was also upon the jury panel, by mistake answered to that name, went into the jury box, and not being challenged, was duly sworn, the trial proceeded, and the prisoner was convicted and sentenced, and the mistake was not discovered till the following day, it was held by Lord *Campbell*, C.J., *Cockburn*, C.J., *Cole-ridge* and *Wightman*, JJ., and *Martin* and *Watson*, BB., *dissentientibus Erle*, *Crompton*, *Crowder*, *Willes*, and *Byles*, JJ., and *Channell*, B., that there had been a mistrial and that the Court had jurisdiction to set aside the verdict and judgment, and (*dubitantibus Coleridge*, J., and *Martin*, B.) that the proper course was to order a *venire de novo*. (*Reg. v. Mellor*, *D. & B. C. C.* 468; 27 *L. J.*, *M. C.* 121.)

Want of qualification in jurors to be cause of challenge, but not the want of freehold.

By the 6 Geo. 4, c. 50, s. 27, "If any man shall be returned as a juror for the trial of any issue in any of the Courts hereinbefore mentioned, who shall not be *qualified* according to this Act, the want of such qualification shall be good cause of challenge (*a*), and he shall be discharged upon such challenge, if the Court shall be satisfied of the fact; and, if any man returned as a juror for the trial of any such issue shall be qualified in other respects according to this Act, the want of freehold shall not on such trial in any case, civil or criminal, be accepted as good cause of challenge, either by the Crown or by the party, nor as cause for discharging the man so returned upon his own application, any law, custom, or usage to the contrary notwithstanding; provided that nothing herein contained shall extend in anywise to any special juror."

Not to extend to special jurors.

Persons unqualified.

Sect. 50 of the same Act provides, "That no man shall be impanelled or returned to serve on any jury for the trial of any capital offence in any county, city, or place, who shall not be qualified to serve as a juror in civil causes within the same county, city, or place; and the same matter and cause being alleged by way of challenge, and so found, shall be admitted and taken as a principal challenge; and the person so challenged shall and may be examined on oath of the truth of the said matter."

And see further, as to who are qualified, *ante*, 65 *et seq.*

Challenge to the polls for favour.

3. Challenge to the polls for favour.—This is when either party cannot take any principal challenge, but sheweth causes of favour, which must be left to the conscience and discretion of the triers, upon hearing the evidence, to find him favourable or not favourable. And the causes of favour are infinite. For all which, the rule of law is, that he must stand indifferent, as he stands unsworn. (1 *Inst.* 157.)

## 2. MODE OF TAKING THE CHALLENGE.

Mode of taking the challenge.

No challenge can be taken either to the array or to the polls, until a

(a) But it will not be ground for a new trial. (*Mansell v. Reg.*, *post*, 91.)

full jury have appeared; and therefore, where the challenges are taken previously, they are irregularly made. (*R. v. Edmonds and others*, 4 B. & Ald. 471.) 8. *Challenges.*

The challenge, either by the Crown or by the prisoner, must be before the oath is commenced. The moment the oath has begun, it is too late. The oath is begun by the juror taking the book, having been directed by the officer of the Court to do so; but, if the juror takes the book without authority, neither party wishing to challenge is to be prejudiced thereby. (*R. v. Frost*, 9 C. & P. 137.)

The Crown is not to be put to shew grounds of challenge in a case of felony, till the panel is exhausted: and the 6 Geo. 4, c. 50, makes no alteration of the law in this respect. (*R. v. Parry*, 7 C. & P. 836.)

In felonies, on going through the panel, the Crown has an unlimited right of challenge, or of directing the jurors to "stand by," and, when the panel is perused or exhausted, and not before, it must assign cause. The panel is gone through or perused, not as soon as the names have been called over, but as soon as every proper attempt has been made to secure the presence of those whose duty it is to attend. (*Mansell v. Reg.* (in error), 8 El. & Bl. 54; 1 Dear. & B. C. C. R. 375; 27 L. J., M. C. 4.)

The record stated that J. P., named on the panel, was called and elected and tried, to the intent that he should be sworn, etc., and, without being sworn, he said that he had conscientious scruples against capital punishment. The counsel for the Crown prayed that he should be ordered to "stand by." The counsel for the prisoner prayed that the Crown should assign cause of challenge. The judge told him that if he felt that he could not do his duty he had better withdraw, and thereupon it was ordered by the Court that he should "stand by." It was held, that this was a challenge by the Crown without assigning cause, and therefore, the judge was right in ordering J. P. to stand by. (*Ib.*)

Semble, that the judge has power to excuse a juryman from serving, or to order him to withdraw, if he is physically or morally incapable of performing his duty. (*Ib.*)

There is no fixed rule of practice as to the order in which the names of the jurors on the panel should be called; and, if the usual course is departed from, it is no ground of error. (*Ib.*)

The challenge to the array must be in writing (a); but, where the challenge is to the polls, it is a short way by a verbal challenge. (*Tri. per Pais*, 172.)

A challenge to the array, or to the polls, ought to be propounded in such a way at the trial as that it may be then put upon the *Nisi Prius* record, so that the other party may either demur or counterplead, or deny the matter of challenge; and, unless the challenges are so put on the record, the party is not in a condition, as a matter of right, to insist upon them. (*Carmarthen (Mayor) v. Evans*, 10 Me. & W. 274; 2 Dowl., N. S., 296, S. C.; *R. v. Edmonds*, 4 B. & Ald. 471.)

Although the Court would, probably, in some cases, where a valid challenge has been made and overruled at *Nisi Prius*, but omitted to be put upon the record, grant a new trial, they will not do so where the party must have been aware of the ground of challenge before the trial, and might, by moving to change the venue, have obviated the objection. (*Ib.*)

Where the challenges were not put on the record, the defendants were held not to be in a condition to ask the opinion of the Court of King's Bench, as a matter of right, upon their sufficiency. (*R. v. Edmonds*, 4 B. & Ald. 471.)

The proper mode of raising an issue as to the allowance or disallowance of a challenge is by a demurrer or counter-plea. (*Ib.*)

If the judge overrules the challenge without demurrer, then it is

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(a) See form, (No. 5), *post*.



8. *Challenges.* proper for a bill of exceptions, per *Saunders*, L.J. (*R. v. City of Worcester*, *Skin.* 101; *Mansell v. Reg.*, *ante*, 91.)

A challenge of the array, stating that the sheriff "has not chosen the panel indifferently and impartially, as he ought to have done, and that the panel is not an indifferent panel," is bad on demurrer, as being too general. (*Reg. v. Hughes*, 1 *Car. & K. Rep.* 235.)

A new trial will not be granted, on the ground that a juror was liable to be challenged if the party had an opportunity of making his challenge. (*R. v. Sutton*, 8 *B. & C.* 417; 2 *M. & R.* 406, *S. C. nom. R. v. Despard.*)

If during the trial of a felony it be discovered that the prisoner has a relation on the jury, this is no ground for discharging the jury, and the case must proceed. (*Reg. v. Wardle*, *Car. & M.* 647.)

The disallowing of a challenge is not a ground for a new trial, but for a *venire de novo*. (*R. v. Edmonds*, *ante*, 91; *Gray v. Reg.*, 11 *Cl. & Fin.* 427.)

It is not competent to ask jurymen (whether special jurymen or talesmen) if they have not, previously to the trial, expressed opinions hostile to the defendants and their cause, in order to found a challenge to the polls on that ground; but such expressions must be proved by extrinsic evidence. (*R. v. Edmonds*, *ante*, 91.)

He that hath divers challenges must take them all at once. (1 *Inst.* 158.)

If a juror be challenged by one party, and after be tried indifferent, it is time enough for the other party to challenge him. (*Ib.*)

After challenge to the array, and trial duly returned, if the same party take a challenge to the polls, he must shew cause presently. (*Ib.*)

If a juror be formerly sworn, if he be challenged, the party must shew cause presently, and that cause must rise since he was sworn. (*Ib.*)

When the Queen is party, the defendant that challengeth for cause must shew his cause presently. (*Ib.*)

But, if a juror be challenged between party and party, and there be enough of the panel besides, the cause of challenge needeth not to be shewed, unless the other side challenge *touts paravail*. (*Tri. per Pais*, 143.)

If a man, in case of treason or felony, challenge for cause, and he be tried indifferent, yet he may challenge him peremptorily. (1 *Inst.* 158.)

The prisoner must take all peremptory challenges himself, even in cases wherein he may have counsel. (2 *Hawk. c.* 43, s. 4.)

As to the number of peremptory challenges, see *ante*, 86.

If, on the trial of a case of felony, the prisoner peremptorily challenge some of the jurors, and the counsel for the prosecution also challenge so many that a full jury cannot be had, the proper course is to call over the whole of the panel in the same order as before, only omitting those who have been peremptorily challenged by the prisoner, and as each juror then appears, for the counsel for the prosecution to state their cause of challenge; and, if they have no sufficient cause, and the prisoner does not challenge, for such juror to be sworn. (*Reg. v. Geach*, 9 *C. & P.* 499.)

On the trial of a misdemeanour on the Crown side of the assizes, it is a fair mode of practice to allow the defendants to object to the jurors as they are called, without shewing any cause, till the panel is exhausted, and then to recall the jurors in the same order in which they were called at first, and not to allow any challenge except for cause. (*Reg. v. Blake-man*, 3 *C. & K.* 97.)

Where a prisoner was found guilty of larceny on an indictment for larceny which contained a count for a previous conviction, and after conviction for the larceny, the Court thought fit to swear the jury afresh to try the question of whether the prisoner had been previously convicted, it was held that the prisoner was not entitled to challenge the jury afresh. (*Reg. v. Key*, 2 *Den. C. C.* 347; 3 *C. & K.* 371; 21 *L. J., M. C.* 35.)

## 3. HOW THE CHALLENGES SHALL BE TRIED.

9. *Talesmen.*

The challenge of him who first challenged shall be first tried. (*Tri. per Pais*, 144.) Challenges, how to be tried.

Upon a challenge to the array, the person making the challenge must be prepared strictly to prove the cause. (*R. v. Savage*, 1 *Moo. C. C.* 51.)

If the array be challenged, it lies in the discretion of the Court how it shall be tried; sometimes it is done by two coroners, and sometimes by two of the jury, with this difference, that, if the challenge be for kindred in the sheriff, it is most fit to be tried by two of the jurors returned; if the challenge be for favour or partiality, then by any other two assigned thereunto by the Court. (2 *Hale*, 275.)

When any challenge is made to the polls, if it be before any jurors are sworn, the Court shall choose the triers; if two are sworn, they shall try; and, if they try one indifferent, and he be sworn, then he and the two triers shall try another; and, if another be tried indifferent, and he be sworn, then the two triers cease, and the two that be sworn on the jury shall try the rest. If the plaintiff challenge ten, and the defendant one, and the twelfth is sworn, because one cannot try alone, there shall be added to him one challenged by the plaintiff, and another by the defendant. (*Finch*, 112; 1 *Inst.* 158.)

The trier's oath is, "*You shall well and truly try, whether A. B. (the jurymen challenged) stand indifferent to the parties by this issue: So help you God.*" (*Anon.*, 1 *Salk.* 152.)

If the cause of challenge touch the dishonour or discredit of the juror, he shall not be examined on his oath; but in other cases he shall be examined on his oath, to inform the triers. (1 *Inst.* 158; *Anon.*, 1 *Salk.* 153. And see the 6 *Geo.* 4, c. 50, s. 50, *ante*, 90.)

Therefore, a jurymen is not to be asked whether he has not, previously to the trial, expressed opinions hostile to the defendant and his cause; but such expressions must be proved by extrinsic evidence. (*R. v. Edmonds*, 4 *B. & Ald.* 471.)

On the trial at *Nisi Prius* of an indictment for libel, on which only three special jurors appeared, the counsel for the prosecution prayed a tales, and the defendant challenged the array of the tales, on the ground that the sheriff was a subscriber to a society who were the prosecutors, and, on issue taken on this challenge, two triers were appointed by the Court, who found in favour of the challenge, and the cause was made a *remanet*. It was made a question in the same case, but not decided, whether the sheriff, whose array is challenged, is a competent witness to prove his indifferency. (*R. v. Dolby*, 1 *C. & K.* 238.)

If the array be quashed against the sheriff, the jury-process shall be directed to the coroners; if against any of the coroners, then process shall be awarded to the rest; if against all of them, then the Court shall appoint certain *elisors* (so named *ab eligendo*), against whose return no challenge shall be taken to the array, because they were appointed by the Court, but he may have his challenge to the polls. (1 *Inst.* 158.)

Where the panel is quashed on a challenge of the array, for unindifferency of the sheriff, the proper course is for the prosecutor to apply to the Court to direct a new jury process to the coroners. (*R. v. Dolby*, 1 *D. & R.* 145; 2 *B. & C.* 104, *S.C.*)

IX. Of *Talesmen*.

By the 6 *Geo.* 4, c. 50, s. 37, "Where a full jury shall not appear before any Court of assize or *Nisi Prius*, or before any of the superior civil Courts of the three counties palatine, or before any Court of great

*Tales de circumstantibus.*

10. *Demeanour of Jurors.*

sessions (a), or where, after appearance of a full jury, by challenge of any of the parties, the jury is likely to remain untaken for default of jurors, every such Court, upon request made for the King by any one thereto authorized or assigned by the Court, or on request made by the parties, plaintiff or demandant, defendant or tenant, or their respective attornies, in any action or suit, whether popular or private, shall command the sheriff or other minister, to whom the making of the return shall belong, to name and appoint, as often as need shall require, so many of such other able men of the county then present as shall make up a full jury; and the sheriff or other minister aforesaid shall, at such command of the Court, return such men duly qualified as shall be present or can be found to serve on such jury, and shall add and annex their names to the former panel, provided that, where a special jury shall have been struck for the trial of any issue, the talesman shall be such as shall be impanelled upon the common jury panel to serve at the same Court, if a sufficient number of such men can be found; and the King, by any one so authorized or assigned as aforesaid, and all and every the parties aforesaid, shall and may, in each of the cases aforesaid, have their respective challenges to the jurors so added and annexed; and the Court shall proceed to the trial of every such issue with those jurors who were before impanelled, together with the talesmen so newly added and annexed, as if all the said jurors had been returned upon the writ or precept awarded to try the issue."

On the trial of an indictment under the commission of gaol delivery there is no tales; but, if the panel be exhausted by non-appearance or challenge of the jurors, there must be a new panel, and the jurors before sworn are not reckoned in the number (4 *Harg. St. Tr.* 1744); and on the trial of an indictment under a commission of oyer and terminer, it should seem that a fresh panel should also be chosen. (*Ib.*)

This mode of filling up the jury may be resorted to, as will be seen from the above enactment, either by the prosecutor or the party indicted (3 *Blackst. Com.* 364); but it seems that the latter cannot pray it until after the default of the former (*Denbawd's case*, 10 *Co. Rep.* 104); and neither party can demand it without the consent of the Attorney-General. (2 *Hawk. c.* 41, s. 18.)

It seems that, in an information at the suit of the Attorney-General, a tales may be prayed for the Crown without his warrant, though he be not present; but not for the defendant. (*Attorney-General v. Parsons*, 2 *M. & W.* 23.)

The jurors returned to serve upon the tales must have the same qualifications as in other cases. Upon an award of tales at Nisi Prius, it is not necessary that the tales should be selected out of persons accidentally present; they may be selected out of persons whose presence the sheriff or coroner has taken previous means to obtain. (*R. v. Dolby*, 2 *B. & C.* 105; 1 *D. & R.* 145, *S.C.*)

The warrant for a tales on a trial in a county palatine must come from the Queen's Attorney-General. (*R. v. Lambe*, 4 *Burr*, 2171.)

## X. Demeanour of Jurors in giving their Verdict, etc.

Jurors to be kept together without meat or drink.

By the law of England, a jury, after the evidence given upon the issue, ought to be kept together in some convenient place, without meat or drink, fire or candle, and without speech with any, unless it be the bailiff, and with him only if they be agreed. (1 *Inst.* 227.)

And the bailiff ought to be sworn to keep them together, and not to suffer any to speak with them. (2 *Hale*, 296.)

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(a) The 1 Will. 4, c. 70, abolishes the Welsh judicature.

The jury should be kept by themselves. (*R. v. Stone*, 6 *T. R.* 527.)

If the jury, after the evidence given to them at the bar, do at their own charges eat or drink, either before or after they be agreed on their verdict, it is finable, but it shall not avoid the verdict; but, if, before they be agreed on their verdict, they eat or drink at the charge of the plaintiff, if the verdict be given for him, it shall avoid the verdict; but, if it be given for the defendant, it shall not avoid it; and so, on the contrary. But, if, after they be agreed on their verdict, they eat or drink at the charge of him for whom they do pass, it shall not avoid the verdict. (1 *Inst.* 227. See *Everett v. Youells*, 4 *B. & Adol.* 681.)

But, with the assent of the justices, they may both eat and drink; as, if any of the jurors fall sick before they be agreed of their verdict, then, by the assent of the justices, he may have meat or drink, and also such other things as be necessary for him, and his fellows also, at their own costs, or at the indifferent costs of the parties, if they so agree; and, if they cannot agree, the justices may in such case suffer the jury to have both meat and drink for a time, to see whether they will agree. (*Doot. & St.* 271.)

Upon the trial of a misdemeanour, where the jury separated at night, without the consent of the defendant, this was holden no ground for granting a new trial. (*R. v. Kennear*, 2 *B. & Ald.* 462. And see *R. v. Woolf*, 1 *Chit. R.* 401.)

After their departure they may desire to hear one of the witnesses again, and it shall be granted, so he deliver his testimony in open Court; and also they may desire to propound questions to the Court for their satisfaction, and it shall be granted, so it be in open Court. (2 *Hale*, 296.)

May re-examine witnesses.

But, if the plaintiff, after evidence given, and the jury departed from the bar, or any for him, do deliver any letter from the plaintiff to any of the jury concerning the matter in issue, which was not given in evidence, it shall avoid the verdict, if it be found for the plaintiff, but not if it be found for the defendant; and so, on the contrary. But, if the jury carry away any writing unsealed, which was given in evidence in open Court, this shall not avoid their verdict, albeit they should not have carried it with them. (1 *Inst.* 227.)

May hear no evidence but in Court.

The record in a case of felony at the quarter sessions, after stating the indictment, plea of not guilty, and verdict of guilty thereon, added, that because it appeared to the justices that, after the jury had retired, one of them had separated from his fellows and conversed respecting his verdict with a stranger, it was considered that his verdict was bad, and it was, therefore, quashed, and a *venire de novo* awarded to the next sessions. It then proceeded to set out the appearance of the parties at the next sessions, and the trial and conviction by the second jury: whereupon all and singular the premises being seen and considered, judgment was given, etc.:—it was held, upon a writ of error brought, that the judgment was right. (*R. v. Fowler and another*, 4 *B. & Ald.* 273.) It was there said, "This judgment must be affirmed. The Court is bound to pronounce what appears to them upon the whole record to be the proper judgment. Here, the first verdict must be either good or bad. If it were good, then the second trial was *coram non iudice*, and may be considered as a nullity. If, on the other hand, the first verdict was bad, inasmuch as the prisoners had put themselves upon the country, the prisoners might well be tried at the next sessions; and the second trial is not to be considered in the nature of a new trial, but the first trial is to be considered a *mistrial*, and therefore a nullity. In either case, the judgment is right."

If a jury of matrons wish to have the evidence of a surgeon before they give their verdict, they should return into Court, and the surgeon should be examined as a witness in open Court. (*R. v. Wycherley*, 8 *C. & P.* 262.)

10. *Demeanour of Jurors.*

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After the jury have retired to consider their verdict in a criminal case, whether felony or misdemeanour, and have remained in deliberation a full and sufficient time without being able to agree upon a verdict, it is in the discretion of the judge to discharge them if there is no reasonable prospect of their agreeing upon a verdict. (*Winsor v. Reg.* (in error), *L. R.*, 1 *Q. B.* 289; 35 *L. J.*, *M. C.* 121. Affirmed on appeal, *L. R.*, 1 *Q. B.* 390; 35 *L. J.*, *M. C.* 161; 6 *B. & S.* 143.)

The exercise of such discretion by a judge cannot be reviewed by a Court of Error. (*Ib.*)

May be fined for saying they are agreed, when they are not.

If a jury say they are agreed, and it being asked who shall say for them, they say their foreman; but if, upon further inquiry, they are not agreed, they may be fined. (2 *Hale*, 309.)

Casting lots for their verdict.

If a jury cast lots for their verdict, it shall be set aside, and they shall be fined for the contempt. (*Foy v. Harder*, 3 *Keb.* 805; *R. v. Fitzwater*, 2 *Lev.* 139; *Foster v. Hawden*, *Id.* 205.)

The jury having sat up all night, agreed in the morning to put two papers into a hat, marked *plaintiff* and *defendant*, and so draw lots; *plaintiff* came out, and they found for the plaintiff, which happened to be according to the evidence and the opinion of the judge. Upon motion for a new trial, it was agreed that the verdict must be set aside; but the question was, whether the defendant should pay costs? The Court inclined to give the plaintiff costs, comparing it to the case of a verdict against evidence; but at last it was agreed that the costs should wait the event of a new trial. (*Hale v. Cove*, 1 *Str.* 642.)

But in *Vaise v. Delaval* (1 *T. R.* 11), it was determined, upon a motion for a rule to set aside a verdict, where the jury had tossed up for their verdict, that the affidavit of none of the jurymen themselves could be admitted in evidence, in all of whom such conduct is a very high misdemeanour; but in every such case the Court must derive their knowledge from some other source, such as from some person having seen the transaction through a window, or by some other means.

So also the Court of Common Pleas, after consultation with the other judges, rejected an application to set aside a verdict on the affidavit of a jurymen, that it was decided by lot. (*Owen v. Warburton*, 1 *N. R.* 326.)

Giving verdict without evidence.

The jury may give a verdict without testimony, when they themselves have a cognisance of the fact. (*Tri. per Pais*, 279; 1 *Vent.* 67.)

Juror may be witness.

But, if they give a verdict on their own knowledge, they ought to tell the Court so; and the fair way is to tell the Court, before they are sworn, that they have evidence to give, when they may be sworn as witnesses. (*Anon.*, 1 *Salk.* 405.)

For certainly it is of dangerous consequence to receive a verdict against evidence given, on supposal that some of the jury knew otherwise, or on private information given by any jurymen to the rest, where he cannot be cross-examined. (*Tri. per Pais*, 209.)

The late Mr. Justice *Buller*, in a conversation concerning a case which had been tried before him (*Smith v. Hollings*, *Stafford Spring Assizes*, 1794), said to Mr. *Howell* (editor of the 'State Trials'), that, where a jurymen had knowledge of any matter of evidence in a cause which he is trying, he ought not to impart the same privily to the rest of the jury, but should state to the Court that he had such knowledge, and thereupon be examined, and subjected to cross-examination as a witness. (6 *Howell's St. Tr.* 1012, n.)

And, in a recent case, it was held that, where it is essential to prove the particular value of an article, the jury may use that general knowledge which any man can bring to the subject; but, if any of the jurors has a particular knowledge on the subject, arising from his being in the trade, he ought to be sworn and examined as a witness. (*R. v. Rosser*, 7 *C. & P.* 648.)

After they have agreed, they may, in causes between party and party, if the Court be risen, give a private verdict before any of the judges of the Court; and then they may eat and drink. And the next morning in open Court they may either affirm or alter their private verdict; and that which is given in Court shall stand. (1 *Inst.* 227, b.)

10. *Demeanour of Jurors.*

Private verdict.

But in criminal cases of life or member, the jury can give no private verdict; but they must give it openly in Court. (*Ib.*)

In all causes, and in all actions, the jury may give either a general or a special verdict, as well in causes criminal as civil; and the Court ought to receive a special verdict, if pertinent to the point in issue. (*Anon.*, 3 *Salk.* 373.)

Special verdict.

In a case of felony, the judge will not direct the jury to find special facts; and the jury may, if they think proper, find a general verdict, instead of finding special facts with a view to raise a question of law. (*Reg. v. Alday*, 8 *C. & P.* 136.)

Jurors are to try the fact; and the judges ought to judge according to the law that arises upon the fact. (1 *Inst.* 226 (a).)

Jurors to try not the law, but the fact.

The jury should take the law from the judge; and, therefore, when cases had been cited to the judge in a legal argument, and he had given an opinion on them, they were not allowed to be read to the jury in the address of the prisoner's counsel to them. (*Reg. v. Parish*, 8 *C. & P.* 94.)

It hath been adjudged, that, if the jury acquit a prisoner of an indictment of felony against manifest evidence, the Court may, before the verdict is recorded, but not after, order them to go out again, and reconsider the matter; but this by many is thought hard, and seems not of late years to have been so frequently practised as formerly. However, it is settled, that the Court cannot set aside a verdict which acquits a defendant of a prosecution properly criminal, as it seems they may a verdict that convicts him, for having been given contrary to evidence and the directions of the judge, or any verdict whatsoever, for a mistrial. (2 *Hawk.* c. 47, ss. 11, 12.)

Finding against evidence.

Where a jury return what the judge considers to be an improper verdict, he may direct them to reconsider it, and is not bound to record it unless they insist upon his doing so. Where the jury reconsider their verdict and alter it, the second is the real verdict of the jury. (*Reg. v. Meany*, 1 *L. & C. C.* 213.)

After the verdict recorded, the jury cannot vary from it; but, before it is recorded, they may vary from the first offer of their verdict; and that verdict which is recorded shall stand. (1 *Inst.* 227; *Reg. v. Voden*, *Dears. C. C.* 229.)

Varying from the verdict.

A verdict finding a matter to have been done *contra formam statuti*, whereas it could not be *contra formam statuti*, shall not be void, if, at the same time, it find the substance of the indictment; but the surplus shall be rejected. (1 *Hawk.* c. 30, s. 9.)

Verdict finding an impossibility.

Verdict shall not be taken so strictly as pleadings; but the substance of the thing in issue ought to be always found. (*Anon.*, 3 *Salk.* 373.)

Verdict, how far to be taken strictly.

Where a jury returned a verdict of guilty on an indictment, but recommended the defendant to mercy on the ground that perhaps he did not know that he was acting contrary to law, it was held that the conviction was not invalidated by this addition to the verdict. (*Reg. v. Crawshaw*, *Bell, C. C.* 303.)

It is said that, if the jurors agree not before the departure of the justices of gaol delivery into another county, the sheriff must send them along in carts, and the judge may take and record their verdict in a

Where they cannot agree.

10. *Demearour of Jurors.* foreign county. (2 *Hale*, 297; *Tri. per Pais*, 274, 285. And see *Morris v. Davies*, 3 *C. & P.* 427.) But, if the case so happen, that the jury can in nowise agree, as if one of the jurors knoweth in his own conscience the thing to be false which the other jurors affirm to be true, and so he will not agree with them in giving a false verdict, and this appeareth to the justices by examination, the justices (as it seemeth) in such case may take such order in the matter as shall seem to them by their discretion to stand with reason and conscience, by awarding a new inquest, or otherwise, as they shall think best by their discretion, like as they may do if one of the jury die before the verdict. (*Dr. & St.* 158.)

And, where the defendant was indicted at the suit of the Crown for a misdemeanour, for publishing a libel of a seditious and immoral tendency, and the jury, after being confined together for fifteen hours, stated that it was impossible for them ever to agree on their verdict, Lord *Tenterden*, C.J., discharged them. (*R. v. Cobbett*, at *Guildhall*, *London*, 7th July, 1831.)

Where the prisoner was indicted for murder, and the record stated that the jury after five hours' deliberation had not agreed, and declared themselves unable to agree upon any verdict, and, "because all other the business of the said session of gaol delivery is finished and completed, and because the Lord's Day is immediately at hand, and because the said justices of our said lady the Queen are required by her letters patent to proceed to and be in her county of Cornwall on Monday now next ensuing, in the execution of the said letters patent, and because it manifestly appears to the justices here that for the reasons and causes aforesaid it is necessary to discharge the said jury," the judge did accordingly discharge the jury; it was held that the judge was right in so doing when a high degree of need was made evident to his mind; that the judge at the trial was to exercise his discretion upon this matter; and that his decision could not be reviewed by a Court of Error. It was also held that such a discharge of a jury did not prevent the prisoner from being tried again upon the same indictment. (*Winsor v. Reg.*, *Law Rep.* 1 *Q. B.* 390; 35 *L. J.*, *M. C.* (*Ex. Ch.*) 161.)

Affidavit after  
verdict.

The affidavit of a juror, after the verdict is given, of what he thought or intended previous to the verdict, is not admissible in evidence on behalf of the defendant; although, indeed, if there be a doubt as to the correctness of the judge's report as to what passed at the trial on the giving the verdict, the affidavit of a juror or bystander is admissible on motion for a new trial, or to rectify a mistake in the minutes. (*R. v. Almon*, 5 *Burr.* 2686. And see *Id.* 2687.) The affidavit of a juror or several jurors to impugn a verdict recorded, on the ground that it was not given with their consent, is not receivable, although the affidavits of bystanders, as to what passed within their knowledge, touching the giving of the verdict and the dissent of some of the jury, are admissible; and, if the Court see reason to think that some of the jury may not have heard what passed at the time of giving the verdict, they will direct a new trial, but will not, at the defendant's request merely, order the verdict to be vacated for the purpose of trying the cause again by the same jury. (*R. v. Wooler*, 6 *M. & Sel.* 366.) But affidavits of jurors as to what took place in open Court, on the delivery of their verdict, are receivable. (*Roberts v. Hughes*, 7 *Mee. & W.* 399.) And affidavits of what a jurymen has been overheard to say out of Court, relative to the misconduct of himself and others in the jury-box, are receivable on a motion for a new trial. (*Addison v. Williamson*, 5 *Jur.* 466, *Exch.*) So is also an affidavit by a jurymen denying the expressions imputed to him. (*Id.*)

Juror taken ill.

In *R. v. Gould*, *M. T.*, 4 *Geo.* 3, the defendant was indicted for murder. The jury were sworn, and part of the evidence given; but, before

the trial was over, one of the jurymen was taken ill, went out of the Court with the judge's leave, and presently after died. The judge, doubting whether he could swear another jury, discharged the eleven, and left the prisoner in gaol. The Court was moved for a writ of *habeas corpus* to bring up the prisoner, that he might be discharged, having been once put upon his trial. This being a new case, the Court said they would advise with the other judges upon it; and afterwards they all agreed that the prisoner might be tried at the next assizes, or the judge might have ordered a new jury to have been sworn immediately. The prisoner was tried accordingly at the next assizes, and acquitted on evidence. (*Dorchester Sum. Ass.* 1763.)

If a juror be taken ill during the trial of a prisoner for felony, the jury may be discharged, and the remaining eleven, together with a new juror, may be re-sworn to try the prisoner. During the trial of *Ann Sealbert*, at the Summer Assizes at York, in the year 1794, before *Laurence, J.*, for murder, one of the jury was seized with a fit, and was carried out of the Court in an insensible state. The judge waited some time, in hope that the juror might recover; but at length one of the jury, who came from the same neighbourhood, requested permission of the Court to go to the public-house to which the sick man had been taken, to inquire into his situation, and he was suffered to go, accompanied by a bailiff, who was sworn to attend him. Upon his return he was sworn, "true answer to make to such questions as should be demanded of him;" and he then deposed that, from what he had seen of his fellow-juror, and from what he knew of the state of his health, he did not think he would be able to attend that trial immediately. Mr. *J. Lawrence* thereupon (after reading from a MS. book of Mr. Justice *Buller* the case of *Jones*, otherwise *Horner*, where a jury, on account of the intoxication of one of the jurors, had been discharged) discharged this jury, and ordered another jury to be sworn; and all the other eleven jurors served upon the second panel. The prisoner was convicted and executed. (*Ann Sealbert's case*, 2 *Leach*, 620.) *41 N. 604*

If a jurymen is taken so ill as to be incapable of attending through the trial, another jurymen returned in the panel may be added to the eleven; but the prisoner should be offered his challenges over again as to the eleven, who should be sworn *de novo*, and the trial should begin again. (*R. v. Edwards*, *R. & R.* 224; *Burn's J.*, 24th edit., Vol. III. p. 119; 3 *Camp.* 207; 4 *Taunt.* 309; 2 *Leach*, C. C. 621, S. C.; *Reg. v. Beere*, 2 *M. v. Rob.* 472.)

Where, in a case of misdemeanour, the jury are improperly and against the will of the defendant discharged by the judge from giving a verdict after the trial has begun, this is not equivalent to an acquittal; nor does it entitle the defendant to judgment, *quod eat sine die*. (*Reg. v. Charlesworth*, 1 *B. & S.* 460; 31 *L. J.*, M. C. 25.)

## XI. Indemnity and Punishment of Jurors.

If a man assault and threaten a juror for giving a verdict against him, he is highly punishable by fine and imprisonment; and, if he strike him in the Court in the presence of the judge of assize, he shall lose his hand and his goods, and profit of his lands during life, and suffer perpetual imprisonment. (1 *Hawk. c.* 21, s. 3.)

By the common law, jurors returned, and not appearing, shall lose and forfeit the issues returned upon them.

And, if a jurymen be called, and (being present) refuse to appear, or, having appeared, withdraw himself before he be sworn, the Court may set a fine upon him at their discretion. (2 *Hale*, 309.)

11. *Indemnity, etc., of Jurors.*

Threatening a juror.

Jurors not appearing.

Present, and refusing to appear, or withdrawing.



11. *Indemnity, etc., of Jurors.*

Jury not appearing.

Where more than one of the persons returned on a jury do appear, but not a sufficient number to take an inquest, and some of the others come within view of the Court, or into the same town in which the Court is holden, but refuse to come into the Court to be sworn, upon proof of such matter, the Court may, at the prayer of the party, order the jurors who appeared to inquire what is the yearly value of such defaulters' lands, and, after such inquiry made, either summon them to appear, on pain of forfeiting such sum as their lands have been found to be worth by the year, or some lesser sum, or impose a fine of the like sum upon them, without any further proceeding. But it seems that such juror shall be liable to lose his issues only for such default, and not the yearly value of his lands, unless the party pray it. But a juror who hath actually appeared, and after makes default, is said to be subject to such forfeiture of the yearly value of his lands, whether the party pray it or not, because his contempt appears to the Court by its own record; yet, even in this case, the Court, in its discretion, will sometimes only impose a small fine. Also it seems that a juror who makes default, without ever coming into the town wherein the Court is holden, is liable only to lose his issues, or to be amerced, but not to be fined. (2 *Hawk. c. 22, s. 14.*)

Action against juryman for verdict.

No action can be supported against a juror for his verdict, however wrongful and vexatious his conduct may have been. (*Johnstone v. Sutton, 1 T. R. 513, 535.*)

Whether a juror may be prosecuted for a verdict in a criminal matter.

It seems to be certain that no one is liable to any prosecution whatsoever, in respect of any verdict given by him in a criminal matter, either upon a grand or petit jury; for, since the safety of the innocent and punishment of the guilty do so much depend upon the fair and upright proceedings of jurors, it is of the utmost consequence that they should be as little as possible under the influence of any passion whatsoever; and, therefore, lest they should be biassed by the fear of being harassed by a vexatious suit, for acting according to their consciences, the law will not leave any possibility for a prosecution of this kind. (1 *Hawk. c. 72, s. 5; Groenvelt v. Burwell, 1 Ld. Raym. 469.*)

Whether they may be fined for their verdict.

It seems to be the current opinion of the old books, that jurors were not subject to any prosecution for false verdict, except by way of attain. And there seem to be very few ancient precedents for the punishment either of a grand or petit jury, merely for giving a verdict against evidence, or the direction of the Court, either in a capital or civil matter. (2 *Hawk. c. 22, s. 20.*)

The fining and imprisoning of jurors for giving their verdict hath several times been declared in Parliament an illegal and arbitrary innovation, and of dangerous consequence to the government and the lives and liberties of the subject. (2 *Keble. 180.*)

Bushell's case, 22 C. 2.

In the year 1670, *Penn and Mead*, two Quakers, being indicted for seditiously preaching to a multitude tumultuously assembled in Gracechurch Street, were tried before the recorder of London, who told the jury that they had nothing to do but to find whether the defendants had preached or not; for that whether the matter or the intention of their preaching were seditious were questions of law and not of fact, which they were to keep to at their peril. The jury, after some debate, found *Penn* guilty of speaking to people in Gracechurch Street; and, on the recorder's telling them that they meant, no doubt, that he was speaking to a tumult of people there, he was informed by the foreman that they allowed of no such words in their finding, but adhered to their former verdict. The recorder refused to receive it, and desired them to withdraw; on which they again retired, and brought in a general verdict of acquittal: and the Court, considering it as a contempt, set a fine of forty marks upon each of them, and condemned them to lie in prison

till it was paid. *Edward Bushell*, one of the jurors, (to whom we are almost as much indebted as to Mr. *Hampden*, who brought the case of ship-money before the Court of Exchequer), refused to pay his fine, and, being imprisoned in consequence of the refusal, sued out his writ of *habeas corpus*, which, with the cause of his commitment, (*viz. his refusing to find according to the direction of the Court, in matter of law*), was returned by the sheriffs of London to the Court of Common Pleas; when Lord C.J. *Vaughan*, to his immortal honour, delivered his opinion as follows:—"We must take off this veil and colour of words, which make a show of being something, but are, in fact, nothing. If the meaning of these words, *finding against the direction of the Court in matter of law*, be that, if the judge, having heard the evidence given in Court, (for he knows no other), shall tell the jury upon this evidence that the law is for the Crown, and they, under the pain of fine and imprisonment, are to find accordingly, every man sees that the jury is but a troublesome delay, great charge, and of no use in determining right and wrong; and, therefore, the trials by them may be better abolished than continued; which were a strange and new-found conclusion, after a trial so celebrated for many hundreds of years in this country." He then applied this sound doctrine with double force to criminal cases, and discharged the upright juror from his illegal commitment. (*Bushell's case*, *Vaugh.* 135; 6 *Howell's St. Tr.* 999. See *Ld. Erskine's Speech on the Trial of the Dean of St. Asaph*, 21 *Howell's St. Tr.* 925; 1 *Ld. Erskine's Speeches*, p. 202.)

"And to say the truth," says Lord *Hale*, "it would be the most unhappy case that could be to the judge, if he, at his peril, must take upon him the guilt or innocence of the prisoner; and, if the judge's opinion must rule the matter of fact, the trial by jury would be useless." (2 *Hale*, 315.)

But, if a jury give a verdict against all reason, convicting or acquitting a person indicted of felony, what shall be done? If the jury *convict* a man against or without evidence, and against the direction of the Court, the Court may reprieve him before judgment, and acquaint the King, and certify for his pardon: if the jury acquit him, in like manner the Court may send them back again (and so in the former case) to consider better of it, before they record the verdict; but, if they are peremptory in it, and stand to their verdict, the Court must take their verdict and record it. (2 *Hale*, 309, 310.)

By the 6 Geo. 4, c. 50, s. 51, "Every Court of Nisi Prius, oyer and terminer, gaol delivery, and sessions of the peace, held for the city of London, shall and may fine any man duly summoned to attend upon any kind of jury in any of such Courts respectively, and making default, or any talesman or viewer making default, in the same manner, to all intents and purposes, as such respective Courts in England and Wales hereinbefore mentioned."

Sect. 53. "If any man, having been duly summoned and returned to serve as a juror in any county in England or Wales, or in London upon any inquest or inquiry before any sheriff or coroner, or before any of the commissioners aforesaid (a), shall not, after being openly called three times, appear and serve as such juror, every such sheriff, or in his absence the under-sheriff or secondary, and such coroner and commissioners respectively are hereby authorized and required (unless some reasonable excuse shall be proved on oath or affidavit) to impose such fine upon every man so making default as they shall respectively think fit, not exceeding £5; and every such sheriff, under-sheriff, secondary, coroner, and commissioners respectively, shall make out and sign a cer-

11. *Indemnity, etc., of Jurors.*

Courts of Nisi Prius, etc., in London, may fine jurors.

Sheriffs, coroners and commissioners may fine jurors for non-attendance.

(a) *Id est*, in sect. 52 of the Act. But as that section relates only to

writs of inquiry, it is not thought worth while to insert it.

11. *Indemnity, etc., of Jurors.*

tificate, containing the Christian and surname, the residence and trade or calling of every man so making default, together with the amount of the fine imposed and the cause of such fine, and shall transmit such certificate to the clerk of the peace for the county, riding, or division in which every such defaulter shall reside, on or before the first day of the quarter sessions next ensuing; and every such clerk of the peace is hereby required to copy the fines so certified on the roll on which all fines and forfeitures imposed at such quarter sessions shall be copied; and the same shall be estreated, levied and applied in like manner, and subject to the like powers, provisions, and penalties, in all respects, as if they had been part of the fines imposed at such quarter sessions."

Persons summoned to serve on juries in inferior courts not attending (a)

to forfeit not more than 40s., nor less than 20s., unless the Court be satisfied with the cause of absence.

Fine leviable by distress and sale.

Fine to be paid to the proper officer of the Court, to be disposed of as other fines of Court.

How fines to be recovered and applied.

\* *Sic.*

Sect. 54. "Every man duly summoned and returned to serve upon any jury for the trial of any cause or criminal prosecution, to be tried in any Court of record holden within the said city of London other than the Courts hereinbefore respectively mentioned, or in any other liberty, franchise, city, borough, or town, who shall not appear and serve on such jury, (after being openly called three times, and on proof being made on oath of the man so making default having been duly summoned,) shall forfeit and pay for every such his default such fine, not exceeding 40s. nor less than 20s., as the Court shall deem reasonable to impose, unless some just cause for such defaulter's absence shall be made appear by oath or affidavit to the satisfaction of the Court; and, if any person on whom such fine shall be imposed shall refuse to pay the same to the person who shall be authorized by the Court to receive the same, it shall be lawful for such Court then, or at its next sitting, and the same is hereby authorized and required, by order of the Court signed by the proper officer thereof, to cause every such fine to be levied by distress and sale of the goods and chattels of the person on whom such fine shall have been imposed; and the overplus money, if any, which shall remain after payment of such fine, and deducting the reasonable charges of such distress and sale, shall be rendered to the person whose goods and chattels shall have been so distrained and sold; and every fine which shall be so imposed, shall, when received or levied, be paid by the person who shall receive or levy the same to the proper officer of the liberty, franchise, city, borough, or town in which the Court was holden wherein such fine was imposed, to be applied to such uses as issues set on jurors, or other fines set in Courts holden within such liberty, franchise, city, borough, or town, are by charter, prescription, or usage, applicable."

The 6 Geo. 4, c. 50, s. 55, enacts, "All fines to be imposed under this Act by any of the King's Courts of record at Westminster, or any of the superior Courts, civil or criminal, or\* the three counties palatine, or by any Court of assize, Nisi Prius, oyer and terminer, or gaol delivery, or by any Court of sessions of the peace in England, or by any Court of great sessions or sessions of the peace in Wales (b), shall be levied and applied in the same manner as any other fines imposed by the same Court; and all other penalties hereby created (for which no other remedy is given) shall, on conviction of the offender before any one justice of the peace within his jurisdiction, be levied, unless such penalty be forthwith paid, by distress and sale of the offender's goods and chattels, by warrant under the hand and seal of such justice, who is hereby authorized to hear and examine witnesses on oath or affirmation on any complaint, and to determine the same, and to mitigate the penalty, if he shall see fit, to the extent of one moiety thereof; and all penalties, the application whereof is not hereinbefore particularly directed, shall be paid to the complainant; and for want of sufficient distress, the offender shall be

(a) See the 29 Geo. 2, c. 19, now repealed.

(b) The 1 Will. 4, c. 70, abolishes the Welsh judicature, etc.

committed, by warrant under the hand and seal of such justice, to the common gaol or house of correction, for such term, not exceeding six calendar months, as such justice shall think proper, unless such penalty be sooner paid." 12. *Recovery of Penalties, Actions, etc.*

By the 25 & 26 Vict. c. 107, s. 12, "Whenever any fine shall be imposed upon any person for not attending as a juror in obedience to a summons in that behalf, it shall not be lawful to estreat the said fine until after the expiration of fourteen days; and in the meantime the proper officer of the Court by which such fine was imposed shall forthwith, by letter, inform the said person of the imposition of such fine, and require him, within six days after the date of such letter, to forward him an affidavit of the cause, if any, of his non-attendance; and such officer shall, upon the receipt of any such affidavit, submit the same to the said Court, or the judge or chairman who presided at the said Court at the time when such fine was imposed; and such Court, judge, or chairman shall have power to remit such fine."

Fines may be remitted upon cause shown.

Where the party summoned had let his house and was abroad, which fact was communicated to the summoning officer, the Court remitted the fine. (*Ex parte Ford*, 1 *Younge & J.* 401.)

So, likewise, where the summons had by mistake been left at a wrong house, the Court remitted the fine, but required the affidavit of the summoning officer to that fact. (*Ex parte Brown*, *Id.* 401.)

By the 6 Geo. 4, c. 50, s. 60, "From and after the passing of this Act, it shall not be lawful either for the King, or any one on his behalf, or for any party or parties, in any case whatsoever, to commence or prosecute any writ of attain against any jury or jurors for the verdict by them given, or against the party or parties who shall have judgment upon such verdict; and no inquest shall be taken to inquire of the concealments of other inquests; but all such attainments and inquests shall henceforth cease, become void, and be utterly abolished, any law, statute, or usage to the contrary notwithstanding."

Writs of attain abolished.

Sect. 61. "Notwithstanding any thing herein contained, every person who shall be guilty of the offence of embracery, and every juror who shall wilfully or corruptly consent thereto, shall and may be respectively proceeded against, by indictment or information, and be punished by fine or imprisonment, in like manner as every such person and juror might have been before the passing of this Act." (And see further as to the offence of embracery, *tit. "Maintenance," post.*)

Embracers and corrupt jurors punishable by fine and imprisonment.

## XII. Provisions of Jury Act as to Recovery of Penalties, Actions, etc.

By the 6 Geo. 4, c. 50, s. 56, "for the more easy and speedy conviction of offenders against this Act," it is enacted, "That the justice before whom any person shall be convicted of any offence against this Act shall and may cause the conviction to be drawn up in the following form of words, or in any other form of words to the same effect, as the case shall happen, viz. :—

"Be it remembered, that, on —, in the year of our Lord —, at —, A. B. is convicted before me, C. D., one of his Majesty's justices of the peace for the — of —, for that he, the said A. B., did [specifying the offence, and the time and place where the same was committed, as the case shall be]; and the said A. B. is, for his said offence, adjudged by me, the said justice, to forfeit and pay the sum of —. Given under my hand and seal the day and year first above mentioned."

Form of conviction.

Sect. 57. "No such conviction shall be quashed for want of form, or be removed or removable by *certiorari*, or by any other writ or process

Conviction not to be quashed for want of form.

12. *Recovery of Penalties, Actions, etc.*

Remedy for irregularity causing damage.

whatsoever, into any of his Majesty's Courts of record at Westminster; and, where any distress shall be made for any penalty to be levied by virtue of this Act, the distress itself shall not be deemed to be unlawful, nor the party making the same be deemed a trespasser, on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceedings relating thereto; nor shall such party be deemed a trespasser *ab initio* on account of any irregularity which shall be afterwards done by him; but the person aggrieved by such irregularity shall and may recover full satisfaction for the special damage (if any) in an action upon the case, first giving notice in writing of the cause of action to the opposite party one calendar month before the commencement of such action; but no plaintiff shall recover in any action for such irregularity, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the party distraining."

Persons sued may plead the general issue.

Costs.

Sect. 58. "If any suit or action shall be presented against any person for any thing done in pursuance of this Act, such person may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and, if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue his or her action after issue joined, or if upon demurrer or otherwise judgment shall be given against the plaintiff, the defendant shall recover double costs (a), and have the like remedy for the same as any defendant hath by law in other cases; and, though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action, and of the verdict obtained thereupon."

Actions to be commenced within six months, with one month's notice.

Sect. 59. "All actions, suits, and prosecutions, to be commenced against any person for any thing done in pursuance of this Act, shall be laid and tried in the county where the fact was committed, and shall be commenced within six calendar months after the fact committed, and not otherwise; and notice in writing of such cause of action shall be given to the defendant or defendants one calendar month at least before the commencement of the action."

### XIII. Saving Clauses in Jury Act.

Not to affect the Acts relating to Quakers and Moravians (b).

By the 6 Geo. 4, c. 50, s. 63, "Nothing herein contained shall be construed to affect or alter any part of an Act passed in the seventh and eighth years of the reign of King William the Third, intituled '*An Act that the solemn affirmation and declaration of the people called Quakers shall be accepted instead of an oath in the usual form*,' nor any part of an Act passed in the twenty-second year of the reign of King George the Second, intituled '*An Act for encouraging the people known by the name Unitas Fratrum, or United Brethren, to settle in his Majesty's colonies in America*.'"

Not to affect powers unrepealed.

Sect 64. "Nothing herein contained shall extend or be construed to extend to alter, abridge, or affect any power or authority which any Court or judge now hath, or any practice or form in regard to trials by jury, jury process, juries, or jurors, except in those cases only where any such power or authority, practice or form, is repealed or altered by this Act, or is or shall be inconsistent with any of the provisions thereof, nor to abridge or affect any privilege of parliament."

(a) All provisions giving double costs are repealed by the 5 & 6 Vict.

c. 97, s. 2.

(b) See tit. "*Oaths*," post.

## XIV. Forms.

County of —, to wit. } To the churchwardens and overseers of the poor of the  
Hundred of —. } parish [or, to the overseers of the poor of the township]  
of —.

Precept for returning lists of jurors (a).

You are hereby required to make out, before the first day of September next, a true list in writing in the form hereunto annexed, containing the names of all men, being natural-born subjects of the Queen, between the ages of twenty-one and sixty, residing within your parish [or township] qualified to serve upon juries; that is to say, of every such man who has in his own name, or in trust for him, a clear income of ten pounds by the year in lands or tenements, whether of freehold, copyhold, or customary tenure, or of ancient demesne, situate in the said county, or in rents issuing out of any such lands or tenements, or in such lands, tenements, and rents taken together, in fee simple or fee tail, or for his own life, or for the life of any other person, and also of every such man who has a clear income of twenty pounds by the year in lands or tenements situate in the said county, held by lease for the absolute term of twenty-one years, or some longer term, or for any term of years determinable on any life or lives, and also of every such man who is a householder in your parish [or township], and is rated or assessed to the poor-rate or to the inhabited house duty on a value of not less than twenty pounds [if in Middlesex thirty pounds]; and you are required to make out the said list in alphabetical order, and to write the Christian and surname of every man at full length, and the place of his abode, his title, quality, calling, or business, and the nature of his qualification, in the proper columns of the forms hereunto annexed, according to the specimens given in such columns for your guidance.

And, if you have not a sufficient number of forms, you must apply to me for more; and, in order to assist you in making out the list, you are to refer to the poor-rate; and you may, if you think proper, apply to any collector or assessor of taxes, or any other officer who has the custody of any house tax, land tax, or other tax assessment for your parish [or township], and take from thence the names of men so qualified: And in making such list you are to omit the names of all peers, all judges, all clergymen, all Roman Catholic priests who shall have duly taken and subscribed the oath and declaration required by law; all ministers of any congregation of Protestant dissenters whose place of meeting is duly registered, provided they follow no secular occupation except that of a schoolmaster, and produce to you a certificate of some justice of the peace of their having taken the oaths and subscribed the declaration required by law; all serjeants and barristers at law, all members of the Society of Doctors of Law, and all advocates of the civil law, if actually practising, and all attorneys, solicitors, and proctors, if actually practising, and having taken out their annual certificates, and their managing clerks; all officers of the Courts of law and equity, and of the Admiralty and Ecclesiastical Courts, if actually exercising the duties of their respective offices; all coroners, all gaolers and keepers of houses of correction, and all subordinate officers of the same; all members and licentiates of the Royal College of Physicians in London, all members of the Royal Colleges of Surgeons in London, Edinburgh, and Dublin, and apothecaries certificated by the Court of Examiners of the Apothecaries' Company, and all registered pharmaceutical chemists, if actually practising as physicians, surgeons, or apothecaries, or pharmaceutical chemists respectively; all officers of the navy and army on full pay; the master, wardens, and brethren of the Corporation of Trinity House of Deptford Strond, and their clerks, officers, and servants; all pilots licensed by the Trinity House of Deptford Strond, Kingston-upon-Hull, or Newcastle-upon-Tyne, and all masters of vessels in the buoy and light service employed by either of those corporations, and all pilots licensed under any Act of Parliament or charter for the regulation of Pilots; all the household servants of her Majesty; all commissioners of property and income tax; all officers of the Post-Office; all officers of customs and excise; all sheriffs' officers, high constables, and parish clerks; all officers of the rural and metropolitan police; and also all persons exempt by virtue of any Act of Parliament, prescription, charter, grant, or writ.

And, when you have made out such list, you are authorized to order a sufficient number of copies thereof to be printed, the expense of which printing will be allowed you by the parish [or township]; and you are required, on the three first Sundays in September next, to fix a copy of such list, signed by you, on the principal door of every church, chapel, or other public place of religious worship within your parish

(a) This form is given by the 25 & 26 Vict. c. 107.

14. *Forms.*

[or township], and also to subjoin to every such copy a notice to the following effect, inserting the time and place, of which you shall be previously informed: "Take notice, that all objections to the foregoing list will be heard by the justices in petty sessions on the — day of September next, at the hour of —, at —;" and you must allow any inhabitant of your parish [or township] to inspect the original list, or a true copy of it, during the first three weeks of September next, gratis; and you are also further required to produce the said list at such petty sessions, and there to answer on oath such questions as shall be put to you by her Majesty's justices of the peace there present touching the said list; and these several matters you are in no-wise to omit, upon the peril that may ensue. Given under my hand at — in the said county, the — day of —, in the year —.

Clerk of the peace.

The form of precept in *Wales* is to be altered according to the difference of qualification.

## (1). Form of return (a).

County of — } The return of the churchwardens and overseers [or, "of the  
to wit. } overseers"] of the — of —, in the hundred of —, in the  
said county, of men qualified to serve on juries.

Parish or Township; in Towns add the Name of the Street.	Christian and Surname at full Length.	Title, Quality, Calling, or Business.	Nature of Qualification.
All Saints, Derby:			
King Street . . .	Adams, John .	Esquire . . .	Freehold.
John Street . . .	Alley, James .	Merchant . .	Copyhold.
Duke Street . . .	Bond, Henry .	Baker . . .	Leasehold.
High Street . . .	Boyd, George.	Grocer . . .	Poor-rate.
Duke Street . . .	Cole, Charles .	Butcher . .	House Assessment.
Church Street . .	Cook, John .	Innkeeper . .	Windows.

## (2). Conviction for offences against the 6 Geo. 4, c. 50.

The Act gives the form of conviction, see the 56th section, *ante*, 103.

## (3). Challenge to the array, because the sheriff is of kindred to one of the parties (b).

And now at this day, to wit, —, came the aforesaid A., the plaintiff, and B., the defendant, by their attornies, and the jurors were impanelled, and demanded, and came, and thereupon the aforesaid B. challengeth the array of the panel aforesaid, because he said that the panel was arrayed by one John Zouch, knight, now, and at the time of making the array aforesaid, sheriff of the said county of Derby, which said sheriff is a kinsman of the aforesaid John Manners (the plaintiff); to wit, the son of George Zouch, esquire, son of John Zouch, knight, son of John Zouch, esquire, son of William, Lord Zouch, son of Alan, Lord Zouch, son of William, Lord Zouch, son of Elizabeth, daughter of William, Lord Roos, father of William, Lord Roos, father of Thomas, Lord Roos, father of Eleanor, mother of George Manners, knight, father of Thomas, Earl of Rutland, father of the aforesaid John Manners. And this he is ready to verify, whereupon he prayeth judgment, and that the said panel may be quashed. Which said challenge by —, and by —, triers, to this chosen and sworn, is found true. And therefore let the panel aforesaid be quashed and removed, etc. (Tri. per Pais, 160.)

## (4). Challenge because the panel was returned at the instance of the party.

And upon this the said — challenges the array of the said panel, because he says that the panel was arrayed by one J. S., esquire, late sheriff of the county of — aforesaid, at the nomination of the said —, and in his favour; which said challenge, by triers thereof sworn, is found true.

For other forms of challenges, and proceedings thereupon, see *Tri. per Pais*, 159–184; 4 *Chit. C. L. Index*, "Jurors."

(a) The 6 Geo. 4, c. 50, gives this form.

(b) From *Coke's Entries*.

## Justices of the Peace.

**JUSTICES** of the peace are judges of record, appointed by the Queen to be justices within certain limits, for the conservation of the peace, and for the execution of divers things comprehended within their commission, and within divers statutes committed to their charge. (*Dalt.* c. 2.)

Justices of the peace, who are, etc.

Lord Coke says, in 4 *Inst.* 170, "that the whole Christian world hath not the like office as justice of the peace, if duly executed."

The appellation "*justice*" is usually applied to persons in the commission of the peace for counties, etc.; "*magistrate*," to persons exercising similar authority under charter, as in cities, boroughs, etc.

In the justices' commission, they are called "*justices to keep our peace*;" although, however, they are in no part of the commission called *keepers of the peace*, yet, inasmuch as by the 18 Edw. 3, c. 2, they are expressly called *keepers of the peace*, and the principal end of their office is for the keeping of the peace, and their usual description in writs of *certiorari* is by the name of *keepers of the peace*, it hath been adjudged that in the caption of an indictment *keepers of the peace and justices of our lord the King* is good, without expressly naming them *justices of the peace*. (2 *Hawk.* c. 8, s. 55.)

The words in the commission "*to keep our peace*" give the justices the authority which the conservators had at common law, *post*, 108.

The description of justices of the peace by the name of "*justices of our lady the Queen*" *to keep the peace* is good, without saying the *peace of our lady the Queen*; for that is necessarily implied. (2 *Hawk.* c. 8, s. 55.)

By the words *our peace*, when the Queen dies, the surety of the peace is discharged; for, when she is dead, it is not her peace. (2 *Hawk.* c. 8, s. 55, n. *Crompt.* 121.)

A record or memorial made by a justice of the peace of things done before him *judicially* in the execution of his office, in a matter over which he has jurisdiction on the facts as laid before him, shall be of such credit that it shall not be gainsaid. One man may affirm a thing, and another man deny it; but, if a *record* once say the word, no man shall be received to aver or speak against it; for, if men should be admitted to deny the same, there would never be any end of controversies. And, therefore, to avoid all contention, while one saith one thing, and another saith another thing, the law reposes itself wholly and solely in the report of the judge. And hereof it cometh that he cannot make a substitute or deputy in his office, seeing that he may not put over the confidence that is put in him. Great cause, therefore, have the justices to take heed that they abuse not this credit, either to the oppression of the subject by making an untrue record, or the defrauding of the Queen by suppressing the record that is true and lawful. (*Lamb.* 63-66.) See further, as to the conclusive qualities of a conviction, tit. "*Evidence*," Vol. II.; and, as to the conclusive qualities of justices' orders, see *Id.* and tit. "*Order*," *post*.

His record shall not be gainsaid.

Cannot make deputy.

Hereof also it cometh that, if a justice of the peace certify to the Queen's Bench that any person hath broken the peace in his presence, upon this certificate such person shall be there fined, without allowing him any traverse thereto. (*Dalt.* c. 70.) But this practice is now obsolete.

His certificate not traversable.

We shall, under this title, confine our considerations for the most part to the law relative to justices of the peace out of sessions. As to justices of the peace in sessions, see tit. "*Sessions*," Vol. V.

Division of subject.



*1. Conservators of the Peace, etc.*

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Herein,—

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**I. The Office of Conservators of the Peace at the Common Law, before the Institution of Justices of the Peace.**

Conservators by election.

Before the institution of justices of the peace, there were conservators of the peace in every county whose office (according to their names) was to conserve the King's peace, and to protect the obedient and inno-

cent subjects from force and violence. These conservators, by the ancient and common law, were, by force of the King's writ, chosen by the freeholders in the county Court, out of the principal men in the county; after which election so made and returned, the King directed a writ to the party so elected, to take upon him and execute the office until the King should order otherwise. And thus the coroners still continue to be chosen in full county; as also the knights of the shire for the Parliament. (2 Inst. 558-9.)

1. *Conservators of the Peace, etc.*

Besides these conservators of the peace properly so called, there were and are other conservators of the peace by virtue of certain offices; as for instance—

Conservators by office, viz.

1. The Lord Chancellor, and every justice of the Queen's Bench, have, as incident to their offices, a general authority to keep the peace throughout all the realm, and to award process for the surety of the peace, and to take recognizance for it. (2 Hawk. c. 8, s. 2.)

Lord Chancellor and justices of Queen's Bench

2. Also, every Court of record, as such, hath power to keep the peace within its own precinct. (2 Hawk. c. 8, s. 3.)

every Court of record;

3. Also, every justice of the peace is a conservator of the peace. (Crom. 6.)

Justices of peace;

4. Also, every sheriff is a principal conservator of the peace, and may without doubt, *ex officio*, award process of the peace, and take surety for it. And it seems the better opinion, that the security so taken by him is by the common law looked on as a recognizance, or matter of record, and not as a common obligation. (2 Hawk. c. 8, s. 4.)

Sheriff;

5. Also, every coroner is another principal conservator of the peace, and may certainly bind any person to the peace who makes an affray in his presence. But it seems the better opinion, that he has no authority to grant process for the peace; and it seems clear that the security taken by him for the keeping of the peace, (except only where it is taken by him as judge of his own Court, for an affray done in such Court,) is not to be looked on as a recognizance, but as an obligation. (2 Hawk. c. 8, s. 5; see tit. "*Coroner*," Vol. I.)

Coroners;

6. Also, all high and petit constables are by the common law conservators of the peace. (2 Hawk. c. 8, s. 6; see tit. "*Constable*," Vol. I.)

Constables;

7. There were also other conservators of the peace by tenure, who held lands of the King by this service, among others, of being conservators of the peace within such a district. (2 Hawk. c. 8, s. 7.)

Conservators by tenure;

8. Also there were other conservators of the peace by prescription, who claimed such power from an immemorial usage in themselves and their predecessors or ancestors, or those whose estate they had in certain lands, which wholly depended upon such usage, both as to its extent, and the manner in which it was to be exercised. (2 Hawk. c. 8, s. 9.)

Conservators by prescription;

Thus it is said that a mayor of a corporation may be a conservator of the peace by prescription. (Crom. 6.) It is questioned, indeed, by some, whether any such power can be claimed by usage; yet, if the power of holding pleas, and even Courts of record, which are of so high a nature, and imply a power of keeping the peace within their own precincts, may be claimed by usage, as it seems to be certain that they may, it seemeth that the bare authority of keeping the peace in a certain district may as well be claimed by such usage. (2 Hawk. c. 8, s. 10.)

Mayors.

But a mayor, alderman, or recorder, merely as such, is not at common law a justice or conservator of the peace, and therefore in his corporate capacity ought not to exercise the powers of fining or committing to prison, but should do such acts in his character of a justice of the peace.

2. *Commission of Justices, etc.* (*R. v. Langley*, 2 *Ld. Raym.* 1030; *Jones v. Williams*, 5 *D. & R.* 662; 3 *B. & Cres.* 762, *S. C.*)

**Powers of conservators.**

The authority which such conservators of the peace, whether by election, or tenure, or prescription, have at common law is the same authority which constables of a vill or wapentake have at this day. (2 *Hawk.* c. 8, s. 11; *Crom.* 6. See tit. "*Constable*," Vol. I.)

**Their duty.**

The general duty of the conservators of the peace by the common law is to employ their own and to command the help of others, to arrest and pacify all such who in their presence, and within their jurisdiction and limits, by word or deed, shall go about to break the peace. (*Dalt.* c. 1; see tit. "*Arrest*," Vol. I.)

If a conservator of the peace, being required to see the peace kept, shall be negligent therein, he may be indicted and fined. (*Ib.*)

And, if the conservators of the peace have committed or bound over any offenders, they are then to send to or be present at the next sessions of the peace or gaol delivery, there to object against them. (*Ib.*)

**Observations.**

Thus, we have seen, that the ancient common law, before the present constitution of justices was invented, appointed peculiar officers for the maintenance of the public peace, which is indeed the very end and foundation of civil society. Of these, as has been shewn, some had (and still have *virtute officii*) this power annexed to other offices which they hold. Others had it merely by itself, and were thence named *custodes* or *conservatores pacis*, either claiming that power by prescription, or being bound to exercise it by tenure of their lands, or, lastly, being chosen by the freeholders in full county Court before the sheriff, the writ for their election directing them to be chosen "*de probioribus et potentioribus comitatus sui in custodes pacis*." (*Lamb.* 15.)

**Conservators of the peace appointed by the Queen.**

But, when Queen Isabel, the wife of Edward 2, had contrived to depose her husband, by a forced resignation of the Crown, and had set up his son Edward 3 in his place, this, being a thing then without example in England, it was feared, would much alarm the people, especially as the old King was living, though hurried about from castle to castle, till at last he met with an untimely death. To prevent, therefore, any risings or other disturbance of the peace, the new King sent writs to all the sheriffs in England, the form of which is preserved by Thomas Walsingham (*Hist. A.D.* 1327), giving a plausible account of the manner of his obtaining the Crown, to wit, that it was done *ipsius patris bene placito*, and, withal, commanding each sheriff that the peace be kept throughout his bailiwick, on pain and peril of disinheritation and loss of life and limb. And in a few weeks after the date of these writs, it was ordained in Parliament, that, for the better keeping and maintenance of the peace in every county, good men and lawful, which were no maintainers of evil or barretors in the country, should be assigned to keep the peace. (1 *Bla. Com.* 351.)

This brings us to the consideration of the modern institution of justices, as appointed, not by the people, but by the Queen, this assignment being construed to be by the Queen's commission. (4 *Edw.* 3, c. 2; 18 *Edw.* 3, c. 2, s. 2.) Of that commission, therefore, and of the appointment and qualification of justices under it, we shall now treat.

## II. Their Commission, and how and by whom appointed.

**Three kinds of justices of peace.**

Justices of the peace, at this day, are of three sorts:—First, by Act of Parliament, as, the Bishop of Ely and his successors, the Archbishop of York, and the Bishop of Durham, by the 27 *Hen.* 8, c. 24, ss. 20, 21, 22.—Secondly, by charter or grant made by the Queen under the great

seal, as the mayors and chief officers in divers corporate towns and boroughs.—Thirdly, by commission.

We shall proceed to take notice of the appointment and qualification of justices by *commission*, the two other kinds of appointments and qualifications of justices depending on particular Acts of Parliament or charters. The charter usually expressly confers on the mayor and a certain number of the principal corporators a commission of the peace, by virtue of which those who hold the offices from time to time become invested in right of such offices with the powers and character of temporary magistrates. The authority is permanent and in the nature of a perpetual commission, the powers of which are to be exercised successively by the different persons who fill certain offices designated by the charter. (*Weatherhead v. Drewry*, 11 *East*, 175.)

2. *Commission of Justices, etc.*

*By Commission.*]—This commission was not issued till about the year 1327, the earliest statute on the subject to be found in the parliamentary rolls being the 1 Edw. 3, c. 2, s. 16, from which Act we are to date that final alteration in our constitution, whereby the election of conservators of the peace was taken from the people, and translated to the assignment of the Queen. (*Lamb*. 20.) By this statute, however, at first, no other power was given but that of keeping the peace; the more honourable title of justices even was not conferred, the parties elected being still only called conservators, wardens, or keepers of the peace. But the very next year the form of the commission was enlarged, and continued still further to be enlarged, both in that King's reign, and in the reign of almost every other succeeding prince, until the thirtieth year of the reign of Queen Elizabeth, when, by the number of the statutes particularly given in charge therein to the justices, many of which, nevertheless, had been a good while before repealed, and by much vain repetition and other corruptions that had crept into it, partly by the miswriting of clerks, and partly by the untoward huddling of things together, it was become so cumbersome and foully blemished, that of necessity it ought to be redressed: which imperfections being made known to *Sir Charles Wrey*, then lord chief justice of the King's Bench, he communicated the same with the other judges and barons, so as by a general conference had amongst them the commission was carefully refined in the Michaelmas term, 1590, and being then also presented to the Lord Chancellor, he accepted thereof, and commanded the same to be used, which continues with very little alteration to this day. (*Lamb*. c. 9, p. 43.)

Appointment of justices by commission.

This commission consists of two parts, or two different assignments. By the first assignment, any one or more justices have not only all the ancient power touching the peace which the conservators of the peace had at the common law, but also that whole authority which the statutes have since added thereto. (*Dalt.* c. 5, p. 15.) The second assignment defines their powers in sessions. (See tit. "*Sessions*," Vol. V.)

Which consists of two parts.

The form of the commission is as follows:—

*Victoria, by the grace of God of the United Kingdom of Great Britain and Ireland Queen, Defender of the Faith, To A. B., C. D., etc.* [naming all the justices of the county or riding], *greeting (a).*

Form of commission.

*Know ye that we have assigned you jointly and severally, and every one of you, our justices to keep our peace in our county of W.; And to keep and cause to be kept all ordinances and statutes for the good of the peace, and for preservation of the same, and for the quiet rule and government of our people made, in all and*

Jurisdiction of justices out of sessions.

(a) If any gentleman is afterwards added to the number, which is done by appointment from the Lord Chancellor, the clerk of the peace

sends the commission to London to the proper office, where the name is inserted, and the commission is resealed.

2. *Commission of Justices, etc.*

*singular their articles in our said county (as well within liberties as without) according to the force, form, and effect of the same; And to chastise and punish all persons that offend against the form of those ordinances or statutes, or any one of them, in the aforesaid county, as it ought to be done according to the form of those ordinances and statutes; And to cause to come before you, or any of you, all those who to any one or more of our people, concerning their bodies or the firing of their houses, have used threats, to find sufficient security for the peace, or their good behaviour towards us and our people; and, if they shall refuse to find such security, then them in our prisons until they shall find such security to cause to be safely kept.*

In sessions (a).

*We have also assigned you, and every two or more of you (of whom any one of you the aforesaid A. B., C. D., etc., we will shall be one), our justices to inquire the truth more fully, by the oath of good and lawful men of the aforesaid county, by whom the truth of the matter shall be the better known, of all and all manner of felonies, poisonings, enchantments, sorceries, arts magic, trespasses, forestallings, regratings, ingrossings, and extortions whatsoever; And of all and singular other crimes and offences of which the justices of our peace may or ought lawfully to inquire, by whomsoever and after what manner soever in the said county done or perpetrated, or which shall happen to be there done or attempted; And also of all those who in the aforesaid counties in companies against our peace, in disturbance of our people, with armed force have gone or rode, or hereafter shall presume to go or ride; And also of all those who have there lain in wait, or hereafter shall presume to lie in wait, to maim, or cut, or kill our people; And also of all victuallers, and all and singular other persons, who in the abuse of weights or measures, or in selling victuals, against the form of the ordinances and statutes, or any one of them, therefore made for the common benefit of England and our people thereof, have offended or attempted, or hereafter shall presume in the said county to offend or attempt; And also of all sheriffs, bailiffs, stewards, constables, keepers of gaols, and other officers, who, in the execution of their offices about the premises or any of them, have unduly behaved themselves, or hereafter shall presume to behave themselves unduly, or have been, or shall happen hereafter to be, careless, remiss, or negligent in our aforesaid county; And of all and singular articles and circumstances and all other things whatsoever that concern the premises or any of them by whomsoever and after what manner soever in our aforesaid county done or perpetrated, or which hereafter shall there happen to be done or attempted in what manner soever; And to inspect all indictments whatsoever so before you or any of you taken, or to be taken, or before others, late our justices of the peace in the aforesaid county, made or taken, and not yet determined; And to make and continue processes thereupon against all and singular the persons so indicted, or who before you hereafter shall happen to be indicted, until they can be taken, surrender themselves, or be outlawed; And to hear and determine all and singular the felonies, poisonings, enchantments, sorceries, arts magic, trespasses, forestallings, regratings, ingrossings, extortions, unlawful assemblies, indictments aforesaid, and all and singular other the premises, according to the laws and statutes of England, as in the like case it has been accustomed or ought to be done; And the same offenders, and every of them, for their offences, by fines, ransoms, amerciaments, forfeitures, and other means, as according to the law and custom of England or form of the ordinances and statutes aforesaid it has been accustomed or ought to be done, to chastise and punish.*

*Provided always, that, if a case of difficulty upon the determination of any of the premises before you, or any two or more of you, shall happen to arise, then let judgment in nowise be given thereon before you, or any two or more of you, unless in the presence of one of our justices of the one or other bench, or of one of our justices appointed to hold the assizes in the aforesaid county.*

*And therefore we command you and every of you, that, to keeping the peace, ordinances, statutes, and all and singular other the premises, you diligently apply yourselves; and that, at certain days and places which you or any such two or more of you as is aforesaid shall appoint for these purposes, into the premises ye make inquiries; and all and singular the premises hear and determine, and perform and fulfil them in the aforesaid form, doing therein what to justice appertains, according to the law and custom of England; Saving to us the amerciaments and other things to us therefrom belonging.*

*And we command by the tenor of these presents our sheriff of W., that, at certain*

(a) As to the constructions put upon this part of the commission and the laws, etc., relative to the sessions in general, see tit. "Sessions," Vol. V.

days and places which you or any such two or more of you, as is aforesaid, shall make known to him, he cause to come before you, or such two or more of you as aforesaid, so many and such good and lawful men of his bailiwick (as well within liberties as without), by whom the truth of the matter in the premises shall be the better known and inquired into.

2. Commis-  
sion of Jus-  
tices, etc.

Lastly, We have assigned to you, the aforesaid A. B., keeper of the rolls of our peace in our said county; And therefore you shall cause to be brought before you and your said fellows, at the days and places aforesaid, the writs, precepts, processes, and indictments aforesaid, that they may be inspected, and by a due course determined as is aforesaid.

Custos Rotulo-  
rum.

In witness whereof we have caused these our letters to be made patent. Witness ourself at Westminster, etc.

This manner of issuing the commission in the Queen's name, seems to be founded on the 27 Hen. 8, c. 24, s. 2, which enacts that "no person, of whatever estate, degree, or condition soever he be, shall have any power or authority to make any justices of the peace; but that they shall be made by letters patent under the King's great seal, in the name and by authority of the King, and his heirs, kings of this realm, in all shires, counties, counties palatine, and other places of this realm, Wales, and the Marches of the same, or in any other his dominions, at their pleasure and wills, in such manner and form as justices of the peace be commonly made in every shire of this realm; any grants, usages, precriptions, allowances, Act or Acts of Parliament, or any other thing or things to the contrary thereof notwithstanding."

Justices appoint-  
ed by the Queen.

By sect. 5. "Justices of the peace, to be made and assigned by the King's highness within the county palatine of Lancaster, shall be made and ordained by commission under the King's usual seal of Lancaster, in manner and form as hath been accustomed."

In the county  
palatine.

And it is provided by section 6th, "That all cities, boroughs, and towns corporate within this realm, which have liberty, power, and authority to have justices of peace, or justices of gaol delivery, shall still have and enjoy their liberties and authorities in that behalf, after such like manner as they have been accustomed, without any alteration by occasion of this Act."

In cities,  
boroughs, etc.

Since this statute, it seems very doubtful whether the Queen can delegate to a subject the power of appointing a justice of the peace. Thus, where a charter provided that there should be two aldermen in the borough of D., who should act for one year, by themselves, or *their deputies*; that, on their death or removal, other aldermen should be elected, who should act for the rest of the year by themselves, or *their deputies*; that, in the absence of the aldermen, new aldermen might be elected in their room; and that the alderman for the time being should be justice of the peace for the borough: it was held, that the deputy of an alderman had not the power of a justice of the peace vested in him; and that, at all events, if the Crown can delegate the power of appointing a justice in this manner, such a delegation can only be made in the most clear and express language, such as "the deputy shall be made a justice of the peace," and not by implication merely. *Jones v. Williams*, 5 D. & R. 654; 3 B. & C. 762, S. C. And see *Arnold v. Dimsdale*, 2 E. & B. 580.

Doubtful  
whether the  
Queen can de-  
legate the power  
of appointing  
justices.

Must be in the  
most clear and  
express language

The Crown may grant commissions of the peace for any particular district in a county.

In a particular  
district.

By the 5 & 6 Will. 4, c. 76, s. 98, in all boroughs within the meaning of that Act, her Majesty may, from time to time, assign to so many persons as she may think fit, a commission to act as justices of the peace in and for each borough, and in and for each county of a city or town in sched. A. to that Act annexed, and in and for such boroughs in sched. B. to which her Majesty, upon petition of the council thereof, may be pleased to grant such a commission. (See tit. "*Corporation*," Vol. I.)

In boroughs  
within Municipa  
Corporation Act

#### 4. Qualification and Oath of.

Police magistrate with salary.

And, if the council of any of these boroughs shall think it requisite that a salaried police magistrate or magistrates should be appointed within such borough, they shall make a bye-law, appointing the salary to be given to him or them; and, upon a copy of this bye-law being transmitted to the Secretary of State, her Majesty may appoint one or more fit persons (according to the number mentioned in the bye-law), being barristers of not less than five years' standing, to be police magistrates and justices of such borough (*Id.* s. 99); and the council shall provide and furnish a police office or offices, and pay the necessary expenses thereof. (*Id.* s. 100.)

### III. Who may be Justices.

Who may be justices.

By the 13 Rich. 2, s. 1, c. 7, and the 2 Hen. 5, s. 2, c. 1, the justices shall be made, within the counties, of the most sufficient knights, esquires, and gentlemen of the law.

By the 1 M. sess. 2, c. 8, s. 2, no *sheriff* shall exercise the office of a justice of the peace during the time that he acts as sheriff. And the reason seems to be, because he cannot act at the same time both as judge and officer; for so he would command himself to execute his own precepts. (*Dalt.* c. 3.)

Also, if he be made a *coroner*, this, by some opinions, is a discharge of his authority of justice. (*Dalt.* c. 3.)

But, by the 1 Edw. 6, c. 7, s. 4, if he be created a duke, archbishop, marquis, earl, viscount, baron, bishop, knight, judge, or serjeant-at-law, this taketh not away his authority of a justice of the peace. (*Dalt.* c. 3.)

Also by the 5 Geo. 2, c. 18, s. 2, no proctor shall be a justice of the peace for any county, during the time he shall continue in the practice of that business. But by sect. 4, this does not extend to cities or towns, counties of themselves; or to cities, towns, cinque ports, or liberties, having justices of the peace by charter, commission, or otherwise.

By the 6 & 7 Vict. c. 73, s. 33, no attorney or solicitor shall be capable to continue or be a justice of the peace for any county within that part of Great Britain called England, or the principality of Wales, during such time as he shall continue in the business or practice of an attorney or solicitor.

But by sect. 34, it is enacted, that the prohibition last hereinbefore contained shall not extend or be construed to extend to any city or town being a county of itself, or to any city, town, cinque port, or liberty having justices of the peace within their respective limits and precincts by charter, commission, or otherwise; but that in every such city, town, liberty, and place, attornies or solicitors may be capable of being justices of the peace, and in such manner only as they might have been if this Act had never been made, anything hereinbefore contained to the contrary thereof in anywise notwithstanding.

### IV. Qualification and Oath of Justices.

Qualification as regards estate.

The 18 Geo. 2, c. 20, s. 1, after reciting that "By many Acts of Parliament of late years made, the power and authority of justices of the peace is greatly increased, whereby it is become of the utmost consequence to the commonweal to provide against persons of mean estate acting as such: And whereas the laws now in force are not sufficient for that purpose;" enacts, "That from and after the 25th day of March, 1746, no person shall be capable of being a justice of the peace, or of acting as such, for any county, riding, or division within that part of Great Britain called England, or the principality of Wales, who shall not have,

either in law or equity, to and for his own use and benefit, in possession, a freehold, copyhold, or customary estate for life, or for some greater estate, or an estate for some long term of years, determinable upon one or more life or lives, or for a certain term originally created for twenty-one years or more, in lands, tenements, or hereditaments, lying or being in that part of Great Britain called England, or the principality of Wales, of the clear yearly value of £100, over and above what will satisfy and discharge all encumbrances that affect the same, and over and above all rents and charges payable out of or in respect of the same; or who shall not be seised of, or entitled unto, in law or equity, to and for his own use and benefit, the immediate reversion or remainder of and in lands, tenements, or hereditaments, lying or being as aforesaid, which are leased for one, two, or three lives, or for any term of years, determinable upon the death of one, two, or three lives, upon reserved rents, and which are of the clear yearly value of £300; and who shall not, before the said 25th day of March, or before he takes upon himself to act as a justice of peace, after the said 25th day of March, at some general or quarter sessions for the county, riding, or division for which he does or shall intend to act, first take and subscribe the oath following, *videlicet* :—

*“ I, A. B., do swear, that I truly and bonâ fide have such an estate, in law or equity, to and for my own use and benefit, consisting of —, [specifying the nature of such estate, whether messuage, land, rent, tithe, office, benefice, or what else], as doth qualify me to act as a justice of the peace for the county, riding, or division of —, according to the true intent and meaning of an Act of Parliament made in the eighteenth year of the reign of his Majesty King George the Second, intituled, An Act to amend and render more effectual an Act passed in the fifth year of his present Majesty’s reign, intituled, An Act for the further qualification of justices of the peace; and that the same [except where it consists of an office, benefice, or ecclesiastical preferment, which it shall be sufficient to ascertain by their known and usual names] is lying or being, or issuing out of lands, tenements, or hereditaments being, within the parish, township, or precinct of —, or in the several parishes, townships, or precincts of —, in the county of —, or in the several counties of —, [as the case may be].”*

#### 4. Qualification and Oath of.

Oath as to estate.

Which oath, so taken and subscribed as aforesaid, shall be kept by the clerk of the peace of the said county, riding, or division, for the time being, among the records of the sessions for the said county, riding, or division.”

Oath to be recorded.

A sequestration of a living is an encumbrance within the meaning of this enactment. (See *Pack v. Tarpley*, 9 *Ad. & Ell.* 468; 1 *P. & D.* 478, *S. C.*) The clear yearly value contemplated by the Act is plainly that which comes into the pocket of the owner of the estate as such after all demands on it are satisfied.

In an action for a penalty against a party for acting as a commissioner under a local Act without being qualified, where, by the Act, he was required to have a qualification of £50 a year in real property, or £1500 in personalty, or £25 in real and £1000 personal property, “above all charges and encumbrances whatsoever,” it was held, that these latter words did not mean beyond payment of all his debts, but only applied to specific charges on the property in respect of which he claimed to be qualified. (*Dumelow v. Lees*, 1 *C. & K.* 408.)

An estate of more than £300 per annum, held in trust for the wife of A. B. for life, remainder to him for life, with remainder to their children, will not give A. B. a qualification for acting as a justice under this statute. (*Woodward v. Watts*, 2 *E. & B.* 453.)

Sect. 2. “Every such clerk of the peace shall, upon demand for that purpose made, forthwith deliver a true and attested copy of the said oath in writing, to any person paying for the same the sum of 2s. and no more; which being proved to be a true copy of such oath, to be kept amongst the records as aforesaid, shall be admitted to be given in evi-

Copy of oath.

Evidence of oath



4. *Qualification and Oath of.*

Acting without taking such oath.

Penalty £100.

Proof of qualification on defendant.

dence upon any issue in any action, suit, or information, to be brought upon this Act."

Sect. 3. "Any person who shall act as a justice of the peace for any county, riding, or division within that part of Great Britain called England, or the principality of Wales, without having taken and subscribed the said oath as aforesaid, or without being qualified, according to the true intent and meaning of this Act, shall, for every such offence, forfeit the sum of £100; one moiety to the use of the poor of the parish in which he most usually resides, and the other moiety to the use of such person or persons who shall sue for the same, to be recovered, together with full costs of suit, by action of debt, bill, plaint, or information, in any of his Majesty's Courts of Record at Westminster, in which no essoin, protection, wager of law, or more than one imparlance shall be allowed; and in every such action, suit, or information, the proof of his qualification shall lie on such person against whom the same is brought."

It is, it seems, sufficient, if the defendant shows that he has property to the required amount; and it is not incumbent on him to give any evidence with a view of showing that it is not encumbered. (*Dumelow v. Lees*, 1 C. & K. 408.)

Acts of justice not qualified not absolutely void.

The acts of a justice of the peace who has not duly qualified himself are not absolutely void; and, therefore, persons seizing goods under a warrant of distress signed by a justice who has not taken the oaths at the general sessions, nor delivered in the certificate required, are not trespassers. (*Margate Pier Company v. George Hannam, James Dyson, esquires, and two others*, 3 B. & Ald. 266.) That was an action of trespass for taking goods. Two questions were raised in the case, the second of which was, whether the warrant of distress, signed by the defendants Hannam and Dyson, was legal; and that depended upon the question, whether the acts done by Dyson, as a justice for the Cinque Ports, were valid, he having omitted to deliver in a certificate, or to take the oath at the general sessions in the Cinque Ports, as required by the Acts of Parliament. *Abbott, C.J.*, delivered the judgment of the Court as follows:—"This was an action of trespass, brought for levying certain poor-rates for the parish of St. John the Baptist, in the Isle of Thanet. There had been three rates, all regularly made and published. Two of the three had been duly allowed by two of the justices of the Cinque Ports. The third was allowed by the defendants Hannam and Dyson, acting as such justices; the warrants of distress had been issued by these defendants, and executed by the other two defendants, one of whom was an overseer of the poor, and the other a constable of the parish. Copies of the warrants had been demanded, and notice of the action given. A case was reserved at the trial of the cause, upon two questions: first, whether the plaintiffs were liable to be rated for the relief of the poor; secondly, whether the acts of the defendant Dyson, as a justice of the peace for the liberties of the Cinque Ports, in the matter in question, were valid or not. The case was argued before us upon the first question at Serjeants' Inn Hall, and we then gave our opinion in the affirmative, viz. that the plaintiffs were liable to be rated for the relief of the poor. The second question was spoken to at the same time, and afterwards more fully argued here during the present term. It arises in this manner: by stat. 51 Geo. 3, c. 36, his Majesty is authorized to issue a commission, to be directed to certain persons to be therein named, constituting them to be justices of the peace within and throughout the liberties of the Cinque Ports, and investing them with the same power and authority as belongs to any mayor, bailiff, or jurat, to exercise within the liberties of the town whereof he is mayor, bailiff, or jurat. 'And from and after (these are the words of the statute) such commission or commissions shall have so issued, all persons and every

person named in any such commission or commissions shall be, and they and each of them is and are hereby declared to be, justices and a justice of the peace within and throughout the liberties of the Cinque Ports, and invested with the same power and authority within and throughout the same' as belongs to any mayor, bailiff, or jurat within his port or town. By the third section of this Act it is provided and enacted, 'That no person or persons to be named in such commission shall be thereby or by this Act authorized to act as a justice of the peace, unless he shall have such qualification as will authorize him to act for a county, and unless he shall have taken and subscribed the oaths, and delivered in at some general sessions, to be holden in some one of the Cinque Ports, the certificate respectively required to be taken and subscribed and delivered in by persons qualifying themselves to act for counties.' The defendant Dyson had taken the oaths under a writ of *dedimus potestatem*, but he had omitted to deliver a certificate, or take any oath at any general sessions in any one of the Cinque Ports; and upon this omission the objection to the validity of his acts as a justice was grounded. We are of opinion that, notwithstanding this omission, his acts as a justice in the matters in question were valid. An objection of the same nature may happen to arise in some cases of persons acting as justices for counties at large; and this gives a general importance to the question. By the 18 Geo. 2, c. 20, it is enacted, 'That no person shall be capable of being a justice, or acting as such for any county, without the qualification by estate therein mentioned, and who shall not take, at some general or quarter sessions, the oath therein prescribed.' And by the second section, 'Any person who shall act as a justice, without having taken the oath or without being qualified, shall forfeit £100.' It is obvious, that, if the act of the justice issuing a warrant be invalid on the ground of such an objection as the present, all persons who act in the execution of the warrant will act without any authority: a constable who arrests, and gaoler who receives a felon, will each be a trespasser; resistance to them will be lawful; everything done by either of them will be unlawful; and a constable, or persons aiding him, may, in some possible instance, become amenable even to a charge of murder, for acting under an authority which they reasonably considered themselves bound to obey, and of the invalidity whereof they are wholly ignorant. An exposition of these statutes pregnant with so much inconvenience ought not to be made, if they will admit of any other reasonable construction. 'Acts of Parliament,' says *Lord Coke*, 'are to be so construed, as no man that is innocent, or free from injury or wrong, be by a literal construction punished or endamaged.' We think these Acts do most reasonably admit of another construction. We think the *restraining* clauses are only prohibitory upon the justice. By the particular Act upon which this question has arisen, Mr. Dyson, having been named in the commission, is declared to be a justice, and invested with power and authority as such. The proper effect, therefore, as it seems to us, of the third section, is only to make it unlawful in him to act as such, but not to make his acts invalid. Many persons, acting as justices of the peace by virtue of offices in corporations, have been ousted of their offices from some defect in their election or appointment; and, although all acts, properly corporate and official, done by such persons are void, yet acts done by them as justices, or in a judicial character, have in no instance been thought invalid. This distinction is well known. The interest of the public at large requires that the acts done should be sustained: sufficient effect is given to the statutes by considering them as penal upon the party acting. No pecuniary penalty, indeed, is imposed by the stat. 51 Geo. 3, but a justice acting contrary to its prohibitory clause will subject himself, if not to the penalty of the 18 Geo. 2, yet certainly to a prosecution by indictment. For these reasons we think there must be a judgment of nonsuit." (And see *R. v. Justices of Herefordshire*, 1 *Chit. Rep.* 709.)

#### 4. *Qualification and Oath of.*

The acts of county justices in boroughs where they have no concurrent jurisdiction are, it seems, absolutely void. (*Talbot v. Hubble*, 2 Str. 1154.)

Defendant to specify lands not contained in the oath in action against him for being disqualified

Sect. 4. "If the defendant, in any such action, suit, or information, shall intend to insist upon any lands, tenements, or hereditaments not contained in such oath as aforesaid, as his qualification to act as a justice of peace in part, or in the whole, at the time of the supposed offence wherewith he is charged, he shall, at or before the time of his pleading, deliver to the plaintiff or informer, or his attorney, a notice in writing, specifying such lands, tenements, and hereditaments (other than those contained in the said oath), and the parish, township, precinct, or place, or parishes, townships, precincts, or places, and the county or counties, wherein the same are respectively situate, lying, or being (offices and benefices excepted, which it shall be sufficient to ascertain by their known and usual names); and, if the plaintiff or informer, in any such action, suit, or information, shall think fit thereupon not to proceed any further, he may, with the leave of the Court, discontinue such action, suit, or information, on payment of such costs to the defendant as the Court shall award."

Plaintiff may discontinue such action.

Lands not mentioned in oath or notice not allowed.

Sect. 5. "Upon the trial of the issue in any action, suit, or information, to be brought as aforesaid, no lands, tenements, or hereditaments which are not contained in such oath and notice as aforesaid, or one of them, shall be allowed to be insisted upon by the defendant as any part of his qualification."

Lands encumbered.

Sect. 6. "Where the lands, tenements, or hereditaments contained in the said oath or notice are, together with other lands, tenements, and hereditaments belonging to the person taking such oath, or delivering such notice, liable to any charges, rents, or encumbrances, within the true intent and meaning and for the purposes of this Act, the lands, tenements, and hereditaments contained in the said oath or notice shall be deemed and taken to be liable and chargeable only so far as the other lands, tenements, and hereditaments so jointly charged are not sufficient to pay, satisfy, or discharge the same."

Qualification by rent only.

Sect. 7. "Where the qualification required by this Act, or any part thereof, consists of rent, it shall be sufficient to specify in such oath or notice as aforesaid so much of the lands, tenements, or hereditaments out of which such rent is issuing, as shall be of sufficient value to answer such rent."

Action discontinued.

Sect. 8. "In case the plaintiff or informer in any such action, suit, or information shall discontinue the same, otherwise than aforesaid, or be nonsuit, or judgment be otherwise given against him, then, and in any of the said cases, the person against whom such action shall have been brought shall recover treble costs" (a).

Only one penalty.

Sect. 9. "Only one penalty of £100 shall be recovered from the same person by virtue of this Act, or of an Act made in the fifth year of the reign of his present Majesty, intituled, *An Act for the further qualification of Justices of the Peace*, for the same or any other offence committed by the same person, before the bringing of the action, suit, or information, upon which one penalty of £100 shall have been recovered, and due notice given to the defendant of the commencement of such action, suit, or information; anything in this or the same Act to the contrary notwithstanding."

Subsequent action for prior offence.

Sect. 10. "Where an action, suit, or information shall be brought, and due notice given thereof as aforesaid, no proceedings shall be had upon any subsequent action, suit, or information against the same person,

(a) The right to recover treble costs is taken away by the 5 & 6 Vict. c. 97, s. 2.

for any offence committed before the time of giving such notice as aforesaid; but the Court where such subsequent action, suit, or information shall be brought, may, upon the defendant's motion, stay proceedings upon every such subsequent action, suit, or information, so as such first action, suit, or information be prosecuted without fraud, and with effect, it being hereby declared, that no action, suit, or information which shall not be so prosecuted shall be deemed or construed to be an action, suit, or information within the intent and meaning of this Act."

4. *Qualification and Oath of.*

Sect. 11. "Every action, bill, plaint, or information given by this or the said former Act, shall be commenced within the space of six calendar months after the fact upon which the same is grounded shall have been committed."

Limitation of actions.

Sect. 12. "This Act, or anything herein contained, shall not extend, or be construed to extend, to any city or town, being a county of itself, or to any other city, town, Cinque Port, or liberty, having justices of the peace within their respective limits and precincts, by charter, commission, or otherwise; but in every such city, town, liberty, and place, such persons may be capable to be justices of the peace, and in such manner only, as they might have been if this Act had never been made; anything hereinbefore contained to the contrary thereof in anywise notwithstanding."

Places excepted;

Sect. 13. "Nothing in this Act, or in an Act passed in the fifth year of his present Majesty's reign, intituled, *An Act for the further Qualification of Justices of the Peace*, contained, shall extend to any peer or lord of Parliament, or to the lords or others of his Majesty's most honourable Privy Council, or to the justices of either bench, or to the barons of the Court of Exchequer, or to his Majesty's Attorney or Solicitor-General, or to the justices of great sessions for the county palatine of Chester and the several counties of the principality of Wales (a), within their respective jurisdictions, or to the eldest son or heir apparent of any peer or lord of Parliament, or of any person qualified to serve as a knight of a shire by the 9 Anne, c. 5, anything herein contained to the contrary thereof in anywise notwithstanding."

Persons excepted

Peers, etc.;

Eldest son, or heir apparent of any peer, or person qualified to serve as M.P.

Sect. 14. "Nothing in this Act, or in the said Act of the fifth year of the reign of his present Majesty, contained, shall extend, or be construed to extend, to incapacitate or exclude the officers of the Board of Green Cloth from being justices of the peace within the verge of his Majesty's palaces, or to incapacitate or exclude the commissioners and principal officers of the navy, or the two under secretaries in each of the offices of principal secretary of state, or the secretary of Chelsea College, from being justices of the peace in or for such counties or places where they usually have been justices of the peace; anything herein contained to the contrary in anywise notwithstanding."

Or officers of Board of Green Cloth, etc.

Sect. 15. "This Act, or anything herein contained, shall not extend, or be construed to extend, to any of the heads of colleges or halls in either of the two universities of Oxford or Cambridge, or to the vice-chancellor of either of the said universities, or to the mayor of the city of Oxford, or of the town of Cambridge; but they may be and act as justices of the peace of and in the several counties of Oxford, Berks, and Cambridge, and the cities and towns within the same, and execute the office thereof as fully and freely in all respects as heretofore they have lawfully used to execute the same, as if this Act had never been made; anything hereinbefore contained to the contrary notwithstanding."

Heads of houses, etc.

Justices appointed for boroughs within the Municipal Corporations Act are not required to have any qualification by estate, nor need they

Borough justices

(a) The 1 Will. 4, c. 70, abolishes the Welsh judicature.

4. *Qualification and Oath of.* be burgesses (5 & 6 Will. 4, c. 76, s. 101); but they must reside within the borough, or within seven miles of it. (*Id.* s. 98. See tit. "*Corporations*," Vol. I.)

Thus we see that the early statutes had required justices to be made of the most sufficient knights, esquires, and gentlemen of the law; and, their powers having greatly increased, it was necessary, in the eighteenth year of Geo. 2, further to provide against persons of mean estate acting as such justices.

But, besides the property qualifications provided by statute, Dalton has named personal qualities required of them which no statute can secure, and the exercise of which in perfect combination would be beyond the power of the numerous persons, who, though named in the commission of the peace, have not been trained in the study and principles of English law. The importance of some of these has, however, increased since the legislature has increased the extent of the ministerial and judicial duties of justices, both in and out of quarter sessions.

The qualities are (*Dalton*, c. 2) the absence of—

1. *Fear of the power of others, so that they do not justice.*
2. *Of Favour, by which they seek to please a friend.*
3. *Of Hatred or Malice against a party.*
4. *Of Covetousness—when they receive reward.*
5. *Of Perturbation of mind—as anger.*
6. *Of Ignorance, or want of understanding of what is to be done.*
7. *Of Presumption—when without law they proceed according to their own wills.*
8. *Of Delay—which denies justice.*
9. *Of Precipitation—when they proceed without examination and consideration of the fact, or hearing both parties.*

Justices becoming disqualified.

*Becoming disqualified.*]—It has been held, that a person who has qualified for the office of a justice of peace, and acts as such, must have a clear estate of £100 *per annum*, in law or in equity, for his own use in possession, and he must continue to possess it so long as he continues to act, or he will incur the penalty; and, secondly, that in an action against a person for the penalty given by the stat. 18 Geo. 2, c. 20, for acting as a magistrate without a proper qualification, no notice of action is necessary under the 24 Geo. 2, c. 44. (*Wright v. Horton*, *Holt*, N. P. C. 458.) This was an action of debt upon the stat. 18 Geo. 2, c. 20, brought against the defendant to recover a penalty of £100 for acting as a justice of peace in the county of York, not being duly qualified by law. It appeared that the defendant had taken the benefit of an insolvent Act in January, 1814, subsequent to which time he had repeatedly acted as a magistrate, without acquiring any new qualification. He had qualified originally in 1802. No notice of this action had been given by the plaintiff to the defendant. For the defendant it was contended, that the plaintiff was bound to prove a notice of action according to the provisions of the stat. 24 Geo. 2, c. 44. The defendant had acted as a magistrate, and was therefore entitled to the privileges and protection of that office. But *Wood*, B., ruled, that he was not within the Act. The question to be tried is, *was* he a magistrate? It was then contended, that, if they were enabled to show when Mr. Horton was discharged from prison, and that there was a fair probability that his estate would pay his debts, and leave a sufficient surplus to uphold the qualification of a magistrate, the present action would not lie. A legal estate in land was not necessary; an estate in equity was sufficient. They therefore proposed to show, that there would be a surplus of £100 *per annum* after paying Mr. Horton's debts. *Wood*, B.—All the defendant's estate is

now vested in the clerk of the peace. His legal and equitable rights are equally transferable to his creditors. We cannot take an account here, and declare a surplus in his favour. The defendant may ultimately be entitled to qualify; but, at present, he has not the title which the Act of Parliament requires. Verdict for plaintiff.

It should seem that the circumstance of the justice having become once disqualified will not prevent him acting as such justice without a new commission after he has again qualified himself.

## V. Oaths of Office—Allegiance, Supremacy, and Abjuration, etc.

*Oath of Office.*]—On renewing the commission of the peace (which generally happeneth as any person is newly brought into the same) there cometh a writ of *dedimus potestatem* directed out of Chancery to some ancient justice (or other) to take the oath of him which is newly inserted, which is usually in a schedule annexed, and to certify the same into that Court, at such a day as the writ commandeth.

Oath of office necessary.

And power is given to the clerk of the peace of every county, riding, or division in England and Wales, to administer the oaths to justices, by the 1 Geo. 3, c. 13, s. 2, which enacts, "That from and after the passing of this Act, no person who hath already taken, or shall hereafter take, the oaths usually taken by a justice of the peace, under a writ or commission of *dedimus potestatem*, issued, or which shall be issued, from the clerk of the Crown, shall be obliged or compellable to sue out or have any other *dedimus potestatem* from the said clerk of the Crown, to authorize any person or persons therein to be named to administer again to any such justice, on any new commission of the peace being issued under the great seal of Great Britain, for any county, city and county, town and county, riding, or division in England or Wales, the oaths usually annexed to such *dedimus*, and taken by a justice of the peace; but that the clerk of the peace, or his deputy, of every county, city and county, town and county, riding, or division in England and Wales, for which any such justice of the peace hath already acted and qualified, or hereafter, before the issuing any such new commission of the peace, shall act and qualify himself as before mentioned, shall, on every such new commission of the peace being issued, prepare a parchment roll, with the oaths annexed to, and usually taken under, the said writ, or commission of *dedimus potestatem*, by justices of the peace, ingrossed on such roll, and shall administer, without fee or reward, the oaths in such roll specified to every such justice of the peace within the respective counties, cities and counties, towns and counties, ridings, or divisions, for which he shall respectively act, or intend to act, and who shall desire to take such oaths; and that every such justice of the peace, after the taking the oaths contained in the said roll, shall subscribe his name on the said parchment roll; and the said roll, with the oaths so taken and subscribed, shall be kept by the respective clerks of the peace of the respective counties, cities and counties, towns and counties, ridings, and divisions, in England and Wales, for the time being, amongst the records of the sessions for the said respective counties, cities and counties, towns and counties, ridings, and divisions."

Proviso for such as have once taken the oaths under a *dedimus potestatem*.

It is provided, also, that justices, who have already taken the oaths, shall not be required to go through that ceremony again, upon the issuing of a new commission during the same reign. This is by the 7 Geo. 3, c. 9, which enacts, "That all persons who have been, or shall be, appointed justices of the peace, by any commission or commissions granted, or to be granted, by his present Majesty, and have taken and

Justices not obliged to take and subscribe oaths of said Act more than once during a reign.

5. *Oaths of Office.*

7 Geo. 3, c. 9.

subscribed, or shall take and subscribe, the oaths mentioned in the said Act made in the first year of his present Majesty's reign, and all persons who shall be appointed justices of the peace by any commission or commissions, which shall be granted after his Majesty's demise by any of his successors, kings or queens of this realm, and shall have, after the issuing of the first commission, whereby such persons shall be appointed justices of the peace, in the reign of any such king or queen, taken and subscribed the said oaths, shall not be obliged, during the reign of his present Majesty, or during any future reign in which such oaths shall have been so taken and subscribed as aforesaid, to take and subscribe the same oaths, for or by reason of such persons being again appointed justices of the peace by any subsequent commission or commissions which shall be granted during any such reign, and shall not incur any penalty or forfeiture for the not taking or subscribing the said oaths."

The form of which oath of office at this day is as followeth:—

## Form of oath.

*Ye shall swear, that, as justice of the peace in the county of W., in all articles in the Queen's commission to you directed, you shall do equal right to the poor and to the rich, after your cunning, wit, and power, and after the laws and customs of the realm, and statutes thereof made; And ye shall not be of counsel of any quarrel hanging before you; And that ye hold your sessions after the form of the statutes thereof made; And the issues, fines, and amerciements that shall happen to be made, and all forfeitures which shall fall before you, ye shall cause to be entered without any concealment (or embezzling), and truly send them to the Queen's Exchequer. Ye shall not let for gift or other cause, but well and truly ye shall do your office of justice of the peace in that behalf: And that you take nothing for your office of justice of the peace to be done, but of the Queen, and fees accustomed, and costs limited by statute. And ye shall not direct, nor cause to be directed, any warrant (by you to be made) to the parties, but ye shall direct them to the bailiff of the said county, or other the Queen's officers or ministers, or other indifferent persons, to do execution thereof. So help you God.*

This oath seems to be founded on the 13 Rich. 2, c. 7, which enacts that the justices shall be sworn duly, and without favour, to keep and put in execution all the statutes and ordinances touching their offices.

## In boroughs under Corporations Act.

As to the oath to be taken by justices in towns corporate, and boroughs within the Municipal Corporations Act, see the 5 & 6 Will. 4, c. 76, s. 104, tit. "*Corporation*," Vol. I.

## Oaths of allegiance, supremacy, and abjuration.

*Oaths of Allegiance, Supremacy, and Abjuration, etc.*]—It is necessary that a justice of the peace do also, within six months, take the oath substituted by the 21 & 22 Vict. c. 48, for the oaths of allegiance, supremacy, and abjuration, in one of the courts at Westminster, or at the general or quarter sessions of the place where he shall be or reside, as other persons qualifying for offices. The statute (10 Geo. 4, c. 7) for the relief of Roman Catholic subjects has substituted another oath in the place of those above named, to be taken by persons professing the Roman Catholic religion. (See tit. "*Oaths*," post.)

## Declaration in lieu of the sacramental test abolished.

9 Geo. 4, c. 17.

In addition to these oaths, by the statute of 9 Geo. 4, c. 17, the justice, within six months after his admission to office, was required to make and subscribe the following declaration:—

*"I, A. B., do solemnly and sincerely, in the presence of God, profess, testify, and declare, on the true faith of a Christian, that I will never exercise any power, authority, or influence which I may possess by virtue of the office of justice of the peace, to injure or weaken the Protestant Church, as it is by law established in England, or to disturb the said Church, or the bishops and clergy of the said Church, in the possession of any rights or privileges to which such Church, or the said bishops or clergy, are or may be entitled."*

But, by the 29 Vict. c. 22, the necessity for making or subscribing this declaration is now abolished.

## Indemnity for not taking in time.

N.B.—There is a clause of indemnity in some Act of Parliament almost every session, to give further time to justices to take the oaths,

provided they take them within the time therein specified, and qualify according to the 18 Geo. 2, c. 20. But the indemnity does not extend to any person against whom final judgment has been given; nor to any justice acting without being duly qualified.

6. *How Office of, determined.*

## VI. How Office of, Determined.

Any justice may be discharged from the commission by writ under the Great Seal. The Queen may determine the commission at her pleasure, and that either expressed, as by writ under the Great Seal, or by implication, by making a new commission, and leaving out the former justices' names. But until notice, or publishing of the new commission, the acts of the former justices are good in law. (*Dalt. c. 3.*)

Office, how determinable.

The death or abdication of the Queen determines the authority of all the justices named by her in the commission.

But by the 1 Anne, st. 1, c. 8, s. 2, no patent or grant of any office or employment shall determine by the Queen's death or demise, but shall continue in force for six months after, unless in the meantime made void by her successor, which is done by a new commission; for every new commission supersedes the former. (1 *Blackst. Com.* 353.)

How far dependent on Queen's demise.

But to mayors and chief officers in corporations, who have the authority of justices of the peace, or of conservators of the peace, by grant under the Queen's letters patent to them and their successors, the authority remaineth, notwithstanding the Queen's death or demise. (*Dalt. c. 3.*)

Officers in corporations keep their office independent of Queen's demise.

Neither can the Queen discharge these at her pleasure; but yet such grants and charters may, for some great and general defect or miscarriage in the execution of the powers therein granted, be repealed, and the liberties seized. (*Dalt. c. 3, p. 8.*)

Formerly, it was thought, that, if a man named in any commission of the peace had afterwards a new dignity conferred upon him, this determined his office, as he no longer answered to the description given in the commission (1 *Bla. Com.* 353); but it was long ago enacted, by the 1 Edw. 6, c. 7, that, "although any justice of the peace be made duke, archbishop, marquis, earl, viscount, baron, bishop, justice of either bench, or serjeant-at-law, yet he shall remain justice, and have authority to execute the same." (*Ante*, 114.)

A new dignity being conferred does not determine the office.

The warrant of a justice of the peace remains in force until executed, though the magistrate dies. ("Warrant," Vol. V.)

Warrant of justice who is dead.

## VII. Their Jurisdiction, and Duties.

Herein of—

1. *The Local Limits of their Jurisdiction*, p. 124.
2. *In respect of their Description, and their acting in Cases in which they are interested*, p. 132.
3. *In respect of their Number*, p. 135.
4. *In respect of the Offence or Injury complained of, and their Duties herein, etc.*, p. 135.
5. *Jurisdiction of, ex Officio*, p. 144.



7. *Their Jurisdiction.*

## 1. THE LOCAL LIMITS OF THEIR JURISDICTION.

Justices for counties, ridings, and divisions.

In general.

When out of county.

When a justice may act in his county for an offence committed out of it.

*Justices for Counties, Ridings, and Divisions.*—In treating of the jurisdiction of justices of the peace, as regards the place where the act or offence was committed, it should be premised that, as a general rule, the authority of justices of the peace, when appointed by commission from the Crown, is limited to the respective counties, ridings, and divisions therein specified; and that of magistrates, in separate jurisdictions, is confined to their respective districts. It is in no case attached to the person, so as to be capable of being exercised elsewhere than within those limits. (*Paley on Conv.* 16.) But, in some cases, a justice of the peace may act when he is out of the county, riding, or division; and in some cases his power extends to other counties, ridings, and divisions.

As to the former case, when he is out of the county, etc.—It is said that the justices have no *coercive* or judicial power when out of the county; and, therefore, that an order for payment of labourers' wages, made by them out of the county, is not binding. But it is said that *recognizances voluntarily* taken before them in any place are good, and that *ministerial* acts may be performed out of the county. (2 *Hawk.* c. 8, s. 28; 2 *Hale*, 51.) These statements, however, of *Hawkins* and *Hale* are founded on the case of *Helier v. Hundred de Benhurst* (*Cro. Car.* 211), and seem not to be strictly supported by the decision in that case. This was so considered recently, in the case of a recognizance directed by the 4 & 5 Vict. c. 58, s. 8 (the Act regulating the trial of controverted elections), to be entered into "before one of her Majesty's justices of the peace," and which "every justice of the peace" was thereby empowered to take. The necessary recognizance in the case of the borough of Caernarvon having been entered into in Middlesex before a justice for Warwickshire, the examiner of recognizances appointed under the Act held, after argument, that a justice of the peace had no authority to take such recognizance beyond his jurisdiction; and the House of Commons, acting on this decision, refused to allow the parties to correct the mistake. (*Hans. Parl. Deb.*, 3rd Ser., vol. 59, p. 1130.)

And, although it be generally true that a justice of the peace hath no jurisdiction over offences committed *out* of his county, yet there are cases where the presence of an offender *within* his county gives him authority, arising out of the necessity of preserving the peace, to proceed against such offender. Thus, it has been long settled that, if a man commit a felony in the county of C., and goes into the county of W., a justice of the peace of the latter county may take his examination and information against him in that county, and may commit him, and bind over the witnesses to give evidence at the trial, and in short proceed as if the offence had been committed within his jurisdiction. (2 *Hale*, 51; and under sect. 22, 11 & 12 Vict. c. 42.) And he hath a like authority with respect to a person residing or being in his county, etc., who is charged with any indictable crime or offence committed on the high seas, or in any creek, harbour, haven, or other place in which the Admiralty have or claim jurisdiction, or with any crime or offence committed on land beyond the seas for which an indictment may be preferred in England or Wales. (11 & 12 Vict. c. 42, s. 2.) And, if the offence be bailable before either one or more justices, the requisite number of justices may take a valid recognizance for the appearance of the person accused at the next session of oyer and terminer, etc., there to answer to such matters as may be objected against him. (1 *Ohit. Cri. L.* 94; *R. v. Muilman, Park*, 241.) And the like over murder and manslaughter committed by a British subject abroad. (24 & 25 Vict. c. 100, s. 9.) It seems determined by the case of *R. v. Morgan* (*Cald.* 156), that justices, either of the county from which tenants fraudulently remove goods, or of that in which they are concealed, may convict the offenders in their respective counties. (See tit. "*Distress*," Vol. I.) There are also various Acts for the

protection of the revenue, giving jurisdiction to justices, as well of the county where the offence is committed, as of that in which the offender resides or is apprehended. (See tit. "*Excise and Customs*," Vol. II. See also, *In re Nunn*, 8 B. & C. 644.)

As regards justices for counties residing in cities or places which are distinct in point of jurisdiction from the county at large, the 9 Geo. 1, c. 7, s. 3, provides, "for the greater ease of justices of the peace authorized to act for any county," that if any such justice of peace shall happen to dwell in any city, or other precinct that is a county of itself, situate within the county at large, for which he shall be appointed justice of peace, although not within the same county, it shall and may be lawful for any such justice of peace to grant warrants, take examinations, and make orders for any matters, which any one or more justice or justices of the peace may act in, at his own dwelling-house, although such dwelling-house be out of the county where he is authorized to act as a justice of peace, and in some city or other precinct adjoining that is a county of itself; and that all such warrants, orders, and other act or acts of any justice of peace, and the act or acts of any constable, tithingman, headborough, overseer of the poor, surveyor of the highways, or other officer, in obedience to any such warrant or order, shall be as valid, good, and effectual in the law, although it happen to be out of the limits of the proper precinct or authority: Provided always, that nothing in this Act contained shall extend to give power to the justices of peace for the counties at large to hold their general quarter sessions of the peace in the cities or towns which are counties of themselves, nor to empower justices of peace, sheriffs, bailiffs, constables, headboroughs, tithingmen, borsholders, or any other peace officers of the counties at large, to act or intermeddle in any matters or things arising within cities or towns which are counties of themselves, but that all such actings and doings shall be of the same force and effect in law, and none other, as if this Act had never been made.

By the 11 & 12 Vict. c. 42, s. 5, it is enacted that, in cases where a justice of the peace for any county, riding, division, liberty, city, borough, or place shall be also justice of the peace for a county, riding, division, liberty, city, borough, or place next adjoining thereto or surrounded thereby, it shall and may be lawful for such justice of the peace to act as such justice for the one county, riding, division, liberty, city, borough, or other place, whilst he is residing or happens to be in the other such county, riding, division, liberty, city, borough, or other place, in all matters and things hereinbefore or hereafter in this Act mentioned; and that all such acts of such justice, and the acts of any constable or other officer in obedience thereto shall be as valid, good, and effectual in the law to all intents and purposes, as if such justice at the time he shall so act as aforesaid, were in the county, riding, division, liberty, city, borough, or other place for which he shall so act; and all constables and other officers for the county, riding, division, liberty, city, borough, or place for which such justice shall so act as aforesaid, are hereby authorized and required to obey the warrants, orders, directions, act or acts of such justice which in that behalf shall be granted, given, or done, and to do and perform their several offices and duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty; and any such constable or other peace officer, or any other person, apprehending or taking into custody any person offending against law, and whom he lawfully may and ought to apprehend or take into custody, by virtue of his office or otherwise, in any such county, riding, division, liberty, city, borough, or place, may lawfully take and convey such person so apprehended and taken as aforesaid to and before any such justice of the peace for such county, riding, division, liberty, city, borough, or place, whilst such justice shall be in such adjoining county, riding, division, liberty, city, borough or place as aforesaid; and

## 7. Their Jurisdiction.

When justices for counties may act for such counties though resident out of them.

Justices for adjoining counties can act for one such county when they are within the other.

7. *Their Jurisdiction.*

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the said constables and other peace officers, and all such other persons as aforesaid, are hereby authorized and required in all such cases so to act in all things as if the said justice of the peace were within the said county, riding, division, liberty, city, borough, or place for which he shall so act.

By sect. 6 it is enacted "That it shall be lawful for any justice or justices of the peace acting for any county at large, or for any riding or division of such county, to act as such at any place within any city, town, or other precinct, being a county of itself, or otherwise having exclusive jurisdiction, and situated within, surrounded by, or adjoining to any such county, riding, or division respectively; and that all and every such act and acts, matters and things, to be so done by such justice or justices within such city, town, or precinct, as justice or justices for such county, riding, or division respectively, shall be as valid and effectual in law as if the same had been done within such county, riding, or division respectively, to all intents and purposes whatsoever. Provided always that nothing in this Act contained shall extend or give power to the justices of the peace for any county, riding, or division, not being also justices for such city, town, or other precinct, or not having authority as justices of the peace therein, or any constable or other officer acting under them, to act or intermeddle in any matters or things arising within any such city, town, or precinct, in any manner whatsoever."

By sect. 10, warrants issued by justices to apprehend any person charged with an indictable offence may be executed by apprehending the offender in case of fresh pursuit at any place in the next adjoining county or place, and within seven miles of the border of the county, riding, division, liberty, city, borough, or place, within which the justices issuing the same have jurisdiction without having such warrants backed. (See tit. "*Warrant*," Vol. V.)

By the 11 & 12 Vict. c. 43, s. 6, it is enacted "That the provisional enactments above (of the 11 & 12 Vict. c. 42), whereby a justice of the peace for one county, riding, division, etc., may act for the same whilst residing or being in any adjoining county, riding, division, etc., of which he is also a justice of the peace, or whereby a justice of the peace for any county at large, riding, division, or liberty, may act as such within any city, town, or precinct next adjoining thereto, or surrounded thereby, being a county of itself, or otherwise having jurisdiction, as are applicable to the provisions of this Act (to facilitate the performance of the duties of justices of the peace out of sessions with respect to summary convictions and orders), shall be deemed to be incorporated in this Act, and to extend to all acts required of, or to be performed by, justices of the peace under or by virtue of this Act."

By sect. 35 it is enacted, "That nothing in this Act shall extend or be construed to extend to warrants or orders for removal of any poor person; nor to complaints or orders with respect to lunatics; nor to any information, complaint, or other proceeding under the statutes relating to excise, customs, stamps, taxes, post office; nor to any complaints, order or warrants, in matters of bastardy, etc.; nor to any proceedings under the Acts relating to the labour of children in mills or factories."

But by the 26 & 27 Vict. c. 77, it is enacted that this 35th section shall not apply to or control the 6th section, and such last-mentioned section is to be construed as if the 35th section were not and never had been contained in the same Act.

By the 2 & 3 Vict. c. 82, s. 1, "It shall be lawful for any justice or justices of the peace acting for any county to act as a justice or justices of the peace in all things whatsoever concerning or in anywise relating to any detached part of any other county which is surrounded in whole or in part by the county for which such justice or justices acts or act; and all acts of such justice or justices of the peace, and of any constable or other officer in obedience thereto, shall be as good, and all

offenders in such detached part may be committed, for trial, tried, convicted, and sentenced, and judgment and execution may be had upon them, in like manner as if such detached part were to all intents and purposes part of the county for which such justice or justices acts or act; and all constables and other officers of such detached part are hereby required to obey the warrants, orders, and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty."

Doubts having arisen whether these last powers were applicable to cases of summary jurisdiction and to acts merely ministerial, it is enacted by sect. 7 of the 11 & 12 Vict. c. 42, "That all the acts of any justice or justices, and of any constable or officer in obedience thereto, shall be as good in relation to any detached part of any county which is surrounded in whole or in part by the county for which such justice or justices acts or act, as if the same were to all intents and purposes part of the said county, and all constables and other officers of such detached part are hereby required to obey the warrants, orders, and acts of such justice or justices, and to perform their several duties in respect thereof, under the pains and penalties to which any constable or other officer may be liable for a neglect of duty." (See on this head also the 7 & 8 Vict. c. 61, ss. 1, 2, 3, tit. "*County*," Vol. I.)

The 2 & 3 Vict. c. 82, s. 2, enacts, "That the treasurer of every county in England and Wales shall keep an account of all expenses occasioned to such county by any act of such justice or justices of the peace in or with respect to any such detached part of any other county, or out of the prosecution, maintenance, and punishment, conveyance and transport, of all offenders committed from such detached part, and shall twice in every year send a copy of such account to the treasurer of the other county to which such detached part belongs; and the treasurer of such other county shall, out of the moneys in his hands as treasurer, pay the same to the order of the treasurer sending the account, with all reasonable charges of making and sending the account; and in case any difference shall arise concerning the said account, and such difference shall not be adjusted by agreement, it shall be lawful for either of the parties to apply to the justices of assize of the last preceding circuit or of the next succeeding circuit, or to one of such justices, who shall by writing under their or his hands or hand nominate a barrister-at-law, not having any interest in the question, to arbitrate between the parties; and such arbitrator may, if he shall see fit, adjourn the hearing from time to time, and require all such further information to be afforded by either of the parties as shall appear to him necessary, and shall by his award in writing determine the matters in difference, and his award shall be final and conclusive between the parties; and such arbitrator shall also assess the costs of the arbitration, and shall direct by whom and out of what fund the same shall be paid."

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Expenses, how met.

By the Municipal Corporations Act (5 & 6 Will. 4, c. 76, s. 111), in every borough to which the King shall not grant a separate Court of quarter sessions, the justices of the county within which such borough is situate shall exercise in it the same jurisdiction as they may in any other part of the county. It provides, "That after the said 1st day of May, 1836, the justices assigned or hereafter to be assigned to keep the peace in and for the county in which any borough is situated, to which his Majesty shall not have granted that a separate Court of quarter sessions of the peace shall be holden in and for the same, shall exercise the jurisdiction of justices of the peace in and for such borough as fully as by law they and each of them can or ought to do in and for the said county; and no part of any borough in and for which a separate Court of quarter sessions of the peace shall be holden shall be within the jurisdiction of the justices of any county from which such borough before the

In boroughs not having a separate quarter sessions.

In boroughs having such Court, no concurrent jurisdiction if exempt before the Act.

### 7. *Their Jurisdiction.*

passing of this Act was exempt, any law, statute, letters patent, charter, grant, or custom to the contrary notwithstanding."

Under sects. 60 and 65 of this Act, it has been decided that justices for the county may determine complaints against corporate officers refusing to deliver up papers, though such officers reside within the precincts of the corporation, and the corporation have magistrates. (*In Re Gateshead (Justices)*, 6 *Ad. & Ell.* 550, n.)

Where borough or other local jurisdiction has ceased.

By the 1 Vict. c. 78, s. 30, all matters cognizable by virtue of any local Acts of Parliament or otherwise, by any justice, or by the general or quarter sessions of the peace having jurisdiction within any place which, since the passing of the 5 & 6 Will. 4, c. 76 (the Municipal Corporations Act), or the 6 & 7 Will. 4, c. 103 (the Boundary Act), has ceased or may cease to be part of any borough or the liberties thereof, shall be cognizable by the justices or the general or quarter sessions of the county, etc., within which such place is situate, in the same manner and subject to the same provisions as if they were within the jurisdiction of the justices of that borough or place, or of the general or quarter sessions of the same.

In exclusive jurisdictions.

Justices of the peace for the county have concurrent jurisdiction in such boroughs and towns corporate as are not counties of themselves, (*Crompt.* 8), though they have a magistracy of their own, unless the charter by which they are constituted imports an express exclusion of the county justices, by a *non intromittant* clause (*R. v. Sainsbury*, 4 *T. R.* 451); and they have such jurisdiction, though the charter contains such clause, if the borough or town corporate has no separate Court of quarter sessions. (5 & 6 Will. 4, c. 76, s. 111; *Were v. Clerk of the Peace of Devon*, 34 *L. J., M. C.* 47.)

Justices jurisdiction by backing warrants.

The warrant of a magistrate cannot be executed out of his county unless it be backed, that is, indorsed, by a justice of the county in which it is to be carried into execution. (2 *Hale*, 116.)

By the 24 Geo. 2, c. 55, s. 1, warrants issued by justices of counties, cities, towns, etc., against any person who shall escape, go into, reside, or be in any other county, etc., out of the jurisdiction of the justices granting the warrants, shall be indorsed by the justices of the counties where such person shall escape, etc., upon proof upon oath of the handwriting of the justices granting the warrant, and which shall be sufficient authority for its execution in such last county, etc.; and, if the offence in respect of which the warrant is granted be bailable and the offender when apprehended be willing to give bail for his appearance at the next assizes or sessions for the county where the offence was committed, he may be carried before the justice who indorsed the warrant, or some justice of the county where it was indorsed; but, if the offender do not give bail, or the offence be not bailable, then the offender shall be carried before one of the justices of the county where the offence was committed, to be dealt with according to law.

By the 11 & 12 Vict. c. 42, s. 11, warrants of justices for apprehending any person charged with an indictable offence, if such person be not found within the jurisdiction of such justices, or such person escape, go into, reside, or be, or be supposed or suspected to be, in any place out of such jurisdiction, are to have an indorsement according to schedule K made thereon by any justice for the county or place into which such person shall so escape, or go, or in which he shall reside or be, or be supposed or suspected to be, upon proof alone on oath of the handwriting of the justice issuing such warrant; and such indorsement is to be sufficient authority to execute the same warrant in such other county or place, and to carry the person when apprehended before the justice who issued the warrant, or some other justice or justices in and for the same county or of the county where the offence appears in such warrant to have been committed. Provided that, if the prosecutor or witnesses be

in the county or place where such person is apprehended, then before the justice who backed the warrant or some other justice of the same county or place, if the justice backing the warrant so direct.

7. *Their Jurisdiction.*

(SCHEDULE K.)

*Indorsement in backing a Warrant.*

— { Whereas proof upon oath hath this day been made before me, one  
to wit. { of her Majesty's justices of the peace for the said [county] of  
that the name of J. S., to the within warrant subscribed, is of the handwriting of the justice of the peace within mentioned: I do therefore hereby authorize W. T., who bringeth to me this warrant, and all other persons to whom this warrant was originally directed, or by whom it may lawfully be executed, and also all constables and other peace officers of the said [county] of to execute the same within the said last-mentioned [county],\* and to bring the said A. B., if apprehended within the same [county], before me, or before some other justice or justices of the peace of the same county, to be dealt with according to law.  
Given under my hand, this day of 18 .

J. L.

It was held (*R. v. Kynaston*, 1 East, 117) that a magistrate cannot exercise a discretion in this matter; but he must back the warrant, if oath be duly made of the handwriting of the justice who granted it.

By sect. 12, in like manner, warrants against persons for indictable offences issued in any county, etc., city, borough, in England or Wales, by any justice of the peace or judge of her Majesty's Court of Queen's Bench, or justice of oyer and terminer or gaol delivery, if such persons escape, go into, reside, or be, or be supposed or suspected to be in, any county or place in Ireland, are to be indorsed in the same manner by any justice of the peace in and for the county or place into which such persons so escape, etc., and warrants issued in Ireland under like circumstances where the persons so escape, etc., into any county, etc., in England, are to be so indorsed by any justice of the county or place in England where the persons so escape, etc.; and such indorsements are to be sufficient authority for the execution of the warrants in the jurisdiction of the justices so indorsing, and for bringing the persons apprehended before justices of the county where the warrants have been granted.

By sect. 13, warrants against persons under like circumstances as in the last section granted in England, if the persons escape, etc., into any of the islands of Man, Guernsey, Jersey, Alderney, or Sark, are to be indorsed in the same manner by officers within the district having jurisdiction to issue process in the nature of warrants, where the persons so escape, etc.; and process for apprehending persons issued in these islands, if the persons escape, etc., into England, is to be indorsed by the justices in the same manner in and for the county or place where the persons so escape, which indorsements are authority for execution of the process and warrants in the jurisdiction of the justices and officers so indorsing the same.

By the 14 & 15 Vict. c. 55, s. 18, the officers having jurisdiction to issue process in the islands named in the last section who are to indorse warrants are explained to be the bailiffs of Jersey and Guernsey, or in their absence the lieutenants bailiffs of these islands respectively within their respective jurisdictions, the judge of Alderney, or in his absence any jurat of such island within such island, and the seneschal of Sark, or in his absence his deputy within such island.

The 11 & 12 Vict. c. 42, s. 14, in like manner provides for warrants issued under the like circumstances in England or Ireland being indorsed

\* The words following this asterisk are to be used only where the justice backing the warrant shall think fit, and may be omitted in backing. En-

glish warrants in Ireland, Scotland, etc., or in backing Irish or Scotch warrants, etc., in England.

### 7. *Their Jurisdiction.*

and executed in Scotland; and sect. 15 also provides for warrants against persons issued by the Lord Justice General, Lord Chief Justice Clerk, or any of the lords commissioners of justiciary, or by any sheriff or steward depute or substitute, or justice of the peace in Scotland, if the persons named in the warrants escape, etc., into England or Ireland, being indorsed in like manner by justices of the peace in and for the county or place into which such persons so escape, etc., and for the execution of such indorsed warrants in the jurisdiction of their indorsement. (See tit. "*Warrant*," Vol. V.)

With respect to the apprehension of offenders who have escaped from or to the colonies, see tit. "*Colonies*," Vol. I.

By the 11 & 12 Vict. c. 43, s. 3, the above provisions for the backing by indorsement and the execution of justices' warrants are extended to their warrants issued for the apprehension or commitment of persons for offences punishable on summary conviction. And sect. 19 of this Act provides that, where sufficient distress shall not be found within the limits of the jurisdiction of the justice granting the distress warrant, the same may be indorsed by a justice of any other county or place authorizing its execution within the limits of his jurisdiction.

### Seashore.

The soil between high-water mark and low-water mark is part of the county (*Com. Dig.* tit. "*Navigation*," A); and justices have jurisdiction over acts done there at all times of the tide. (*Embleton v. Brown*, 30 L. J., N. S., M. C. 1.)

### Jurisdiction ousted only by express words.

The exclusion of county justices from acting in particular districts has been always watched with a jealous eye; and nothing but express words are deemed capable of having that effect. Therefore, in the case of *Blankey v. Winstanley* (3 T. R. 279) it was adjudged that a charter granting jurisdiction to borough magistrates over a district not within the borough does not exclude the county justices from having a concurrent jurisdiction, without express words in the charter; and, though such charter contain words of reference to former charters in which exclusive jurisdiction is given to the borough justices within the borough, and add that they shall have jurisdiction within the new district *in tam amplo modo et formâ*, etc., yet, if there be in the latter charter a saving clause of the rights of the Crown and of all other persons, the borough magistrates have only a concurrent jurisdiction with the county justices. The Court, in delivering judgment in this case, said, "There are cases in which this Court has held that a settled usage would go a great way to control the words of a charter. Such was the case of *Gope v. Handley*, in which the Court went much further than is necessary in the present case; and it is for the sake of quieting corporations, that this Court has always upheld long usage where it was possible, though recent usage would not perhaps have much weight. But, without having recourse to the usage in this case, on the words of the charter alone, we think the county justices are not excluded, there being no express words for that purpose."

Where the jurisdiction of any justices is taken away, any act of theirs within the borough or franchise is not only a contempt, but is wholly void. (*Talbot v. Hubble*, 2 Str. 1154.) In that case the question was, whether, as the city of *New Sarum* had an exclusive commission of the peace, the justices of the county of *Wilts* could, by virtue of the 12 Car. 2, c. 23, and the 15 Car. 2, c. 23, act in excise matters within the city. This case was argued three times at the bar; and this term (T., 14 Geo. 2), *Lee, C.J.*, delivered the resolution of the Court. (1.) That the Crown might grant to any city to have justices of their own within themselves, and exclude the county justices from intermeddling in the ordinary business of a justice of the peace. (2.) That, in such case, the act of the county justices would be *void*, and not be considered only as a breach of the franchise. (3.) That though the 12 Car. 2 gives jurisdiction in excise matters to the justices of the peace residing

near the place where the forfeiture shall be made, or offence committed, yet it never was the design of the legislature to make any alteration in the respective jurisdictions of the justices, but only to vest the excise jurisdiction of justices of counties, cities, and places, with respect to their several local jurisdictions, within such places. This case is confirmed by the cases of *Blankley v. Winstanley*, ante, 130, and *R. v. Sainsbury*, 4 T. R. 456.

It was decided in the above case of *R. v. Sainsbury*, that, where two sets of magistrates have a concurrent jurisdiction, and one appoints a meeting to grant ale licences, their jurisdiction attaches so as to exclude the others from appointing a subsequent meeting; but they may all meet together on the first day. But, if, after such appointment, the other set of magistrates meet on a subsequent day and grant other licences, their proceeding is illegal, and the subject of an indictment; indeed, it is of infinite importance that the proceedings of magistrates should not only be substantially good, but also that they should be decorous. (See also *Ex parte Kite*, 2 D. & R. 212; 1 B. & Cres. 101, S. C.)

By the cases of *Bates v. Winstanley* (4 M. & Sel. 429) and *R. v. Clarke* (1 D. & R. 316), it has been decided, that, where a charter granted a jurisdiction to borough justices within a borough, in exclusion of the county justices, and likewise gave them jurisdiction over a place beyond the limits of the borough, but not in exclusion of the county justices, the latter might assess such place to the county-rates; and that the city of Bath, in which the justices have a separate jurisdiction for some purposes, but not for all, and commit felons to the county gaol for trial at the assizes, and thereby burthen the county, is not a liberty or franchise having a separate jurisdiction, and is consequently liable to the Somersetshire county-rate.

*Justices of Boroughs.*]—The jurisdiction of justices of boroughs and corporate towns is limited to the boundaries of the borough or corporate town.

Justices of boroughs.

By the 6 & 7 Will. 4, c. 103 (tit. "*Corporations*," Vol. I.) districts were added to several boroughs, and it seemed doubtful whether the borough justices could act upon local Acts of Parliament which gave jurisdiction in certain cases to county justices within these districts. But by the 7 Will. 4 & 1 Vict. c. 78, s. 31 (tit. "*Corporations*," Vol. I.), all the powers possessed by the county justices by virtue of such local Acts were transferred to the borough justices. The effect, also, of the Boundary Act (9 Geo. 4, c. 43) is to transfer to the borough justices all jurisdiction which the county justices before had over places now included within the borough boundaries. (*R. v. Justices of Gloucester*, 6 Nev. & Man. 115; *Paley on Conv.*, by Deacon, 25.)

And by the 13 & 14 Vict. c. 91, s. 9, it is enacted more generally that the justices of every city or borough shall have the same jurisdiction with respect to all offences committed and matters arising within such city or borough, as the justices of the county in which such city or borough is situate now have under or by virtue of any local or general Act of Parliament; and such offences and matters shall be cognizable by one or more of the justices of such city or borough in the same manner as such offences and matters are now cognizable by one or more of the justices of such county.

In boroughs within the Municipal Corporations Act, the borough justices cannot act as justices of the peace at any Court of gaol delivery, or general or quarter sessions, or in making or levying any county-rate, or rate in the nature of a county-rate. (5 & 6 Will. 4, c. 76, s. 101. See tit. "*Corporations*," Vol. I.)

By the same Act (s. 101), all summonses and warrants issued by the justices of a borough in any matter within their jurisdiction may be served or executed at any place within the county in which such



7. *Their Jurisdiction.*

borough is situate, or at any place within seven miles of such borough, without being backed.

As to the jurisdiction of borough justices to commit to county gaols and houses of correction, see the 4 & 5 Will. 4, c. 27, s. 1, and the 5 & 6 Will. 4, c. 38, tit. "*Gaol*," Vol. II., and *R. v. Houghton*, 5 M. & Selw. 300, tit. "*Commitment*," Vol. I.

So, where the justices of a borough have exclusive jurisdiction within the borough itself, and jurisdiction concurrent with that of the county justices over certain places called the liberties of the borough, it has been held that, for an offence committed within the liberties, they might commit to the county gaol, and cause the prisoner to be brought before them for trial at the borough sessions. This was decided in *R. v. Musson* (6 B. & C. 74; 9 D. & R. 172, S. C.) and *R. v. Amos* (2 B. & Ald. 533). From the latter case a doubt arises, whether, where a county magistrate having concurrent jurisdiction has committed a prisoner for an offence within the borough, the borough sessions have not the same power of ordering such prisoner to be brought before them for trial.

## 2. THEIR JURISDICTION AS TO THEIR DESCRIPTION, AND AS TO THEIR ACTING IN CASES IN THE RESULT OF WHICH THEY ARE INTERESTED.

Where a particular description of justices only should act, "Next justice."

As the power vested in justices is of a special kind, where any matter is referred to a particular description of justices, the authority of all others should be excluded by that express designation. (*Dalt.* c. 27, s. 8.) And, therefore, where a statute refers the matter to the *next* justice, no other but the one answering that description has any authority. (*Sanders's case*, 1 Saund. 263; 2 Keb. 521; *Paley on Conv.* 24.)

Justice "in or near."

If the statute refers the matters to justices *in* or *near* the place where it took place, notwithstanding this it seems that any justice of the county has jurisdiction over it. (*R. v. Jennings*, 3 Keb. 383; 1 Saund. 263; *Bac. Ab.*, "*Justices*," E. 5.)

Justices of a division.

So, if the statute refers the matter to justices of the *division*, still any justice of the county has jurisdiction over it; for the word is merely directory, and not restrictive or qualificatory. (*Ashley's case*, 3 Salk. 258; *Anon.*, 12 Mod. 546.) And the same where the statute refers the matter to justices *in* or *near* the parish or division. (*R. v. Price, Cald.* 305; *R. v. Loadale*, 1 Burr. 447.) And, if the statute directs anything to be done "in the division by magistrates acting for the division," any magistrate of the county present at a meeting in the division is competent for that purpose. (*R. v. Price, Cald.* 307.)

"Any two justices."

If a statute merely refers the matter to "any two justices," these terms mean any two justices having jurisdiction by common law or Act of Parliament, and does not enable justices to act out of their jurisdiction, either in respect of its local limits or otherwise. (*In re Peerless*, 1 Q. B. 143.)

Quorum.

Many of the earlier penal statutes having required that one of the justices empowered to act should be of the quorum, to remove any difficulty on that account in small liberties, it is provided by the 4 Geo. 4, c. 27, that, in all cases where the number of justices of the peace for any city, borough, town corporate, franchise, liberty, or other local jurisdiction is limited, and any one, two, or more of them only are of the quorum, all acts done by any two or more of such justices, although neither of them be of the quorum, shall be valid in law, to all intents and purposes, as if they had been of the quorum.

"Court" does not mean justices out of session.

The term *Court*, when used in a statute, does not extend to justices out of session; and, where a statute directs a penalty to be recovered *in any court of record*, this shall not be intended of the quarter sessions, unless it be specially named in such statute, but only of the Courts

of record at Westminster. (*Gregory's case*, 6 Rep. 19, 20; 2 Hale, 29, 30.)

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And it may be here added, that it is a general rule in the construction of statutes, that, where things of an inferior degree are first mentioned, those of a higher dignity shall not be included under general subsequent words; as, where a statute speaks of indictments to be taken before justices of the peace, or *others having power to take indictments*, it shall be understood only of other inferior Courts, and not of the Queen's Bench, or other Courts at Westminster. (*Archbishop of Canterbury's case*, 2 Rep. 46; 2 Hawk. c. 27, s. 124.)

Superiors not intended where inferior first mentioned.

All the justices of each district are equal in authority; but, as it would be contrary to the public interest, as well as indecent, that there should be a contest between different justices, it is agreed, that the jurisdiction in any particular case attaches in the first set of magistrates, duly authorized, who have possession and cognizance of the fact, to the exclusion of the separate jurisdiction of all others. So that the acts of any other, except in conjunction with the first, are not only void, but such a breach of the law as subjects them to indictment. (*R. v. Sainsbury*, 4 T. R. 456; *Paley on Conv.*, by Deacon, 27.)

Priority of authority.

It is clear, that magistrates ought not to execute their functions in their own case, but cause the offenders to be convened or carried before other justices, or desire the aid of some other justice being present. (*Dalt. c. 173.*) For, as in many instances this were unjust, so it is also imprudent; to which purpose the advice of Lord Coke (1 Inst. 377) is applicable, who (upon the occasion of mentioning a certain judge, who made a settlement of his estate, which was void in law, and who also brought an action in his own name, which all the other judges, of his own showing in the court, were of opinion did not lie) makes this observation: that it is not safe for any man (be he never so learned) to be of counsel with himself in his own cause, but to take advice of other great and learned men. And the reason he gives is, for that men are generally more foolish in their own concerns than in those of other people. (See also *Reg. v. Rand*, 35 L. J., M. C. 157, and *Wakefield Local Board of Health v. West Riding and Grimsby Ry. Co.*, 35 L. J., M. C. 69.)

Justices acting in their own case.

Every proceeding which bears this objection on the face of it is absolutely void. (12 Mod. 674, 688; *Salk.* 398.)

In a case where a justice of the peace was also surveyor of the highway, and, a matter which concerned his office coming in question at the sessions, he joined in making the order, and his name was put in the caption, the order was quashed. So, it has been determined, that, on an appeal to the sessions against an order of removal, those justices who are rated to the relief of the poor in either of the contending parishes have not a right to vote. (*R. v. Yarpole*, 4 T. R. 71.) So, where the order of sessions was made upon an appeal against a rate, and three magistrates who were interested took a part in the decision, it was held that the Court was improperly constituted and the decision invalid. (*R. v. Paving Commissioners of Cheltenham*, 10 L. J., N. S., M. C. 99; and see *Reg. v. Allen*, 33 L. J., M. C., N. S. 98; *Law Rep.*, 1 Q. B. 102.) And in the case of *R. v. Gudderidge and another* (5 B. & Cres. 459; 8 D. & R. 217; 4 D. & R., M. C., 35, S. C.), it was held, that a justice of the peace who is a rated inhabitant of a parish cannot vote at sessions, either upon the determination of an appeal against the accounts of the overseers of his parish, or upon the propriety of granting a case for the opinion of the King's Bench, although he gave his vote against his interest. Where it appeared, that, of two magistrates by whom an order of removal was signed, one was a churchwarden of the removing parish, the Court held the order to be bad upon this ground—for the same party could not be complainant, and also adjudicate upon the complaint. (*R.*

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*v. Great Yarmouth*, 6 B. & C. 646; *Reg. v. Recorder of Camb.*, 27 L. J., M. C., N. S. 160.) Even where no actual vote is given by the interested justice, his presence and interference at the hearing of the appeal, by remaining on the Bench and communicating with the other justices, vitiated the proceedings. (*Reg. v. Justices of Suffolk*, 21 L. J., M. C., N. S. 171; *Reg. v. Justices of Hertfordshire*, 6 Q. B. 753.)

By *Holt*, C.J., the Mayor of Hereford was laid by the heels, for sitting in judgment in a cause where he himself was lessor of the plaintiff in ejectment, though he by the charter was sole judge of the Court. (*Anon.*, 1 Salk. 396; *Wright v. Crump*, 2 Ld. Raym. 766.) And there are other instances of justices having been punished by attachment, and others by criminal information, for acting as judges in matters in which they themselves were parties. (See *R. v. Hoseasan*, 14 East, 606.)

In some cases  
empowered to  
act.

Yet, in some cases, even if the justice shall act in his own cause, it seemeth to be justifiable; as when a justice shall be assaulted, or (in the doing his office especially) shall be abused to his face, and no other justice present with him; then it seems he may commit such offender until he shall find sureties for the peace or good behaviour, as the case shall require: but, if any other justice be present, it were fitting to desire his aid. (*Dalt*, c. 173; *R. v. Revel*, 1 Str. 420, 421.)

The fact of a justice being rated does not exclude him from acting in several parochial matters out of quarter sessions. For it is enacted by the 16 Geo. 2, c. 18, s. 1 (which seems to have been made in consequence of some of the cases above mentioned), "That it shall and may be lawful to and for all and every justice or justices of the peace for any county, riding, city, liberty, franchise, borough, or town corporate, within their respective jurisdictions, to make, do, and execute all and every act or acts, matter or matters, thing or things appertaining to their office as justice or justices of the peace, so far as the same relates to the laws for the relief, maintenance, and settlement of poor persons; for passing and punishing vagrants; for repair of the highways; or to any other laws concerning parochial taxes, levies, or rates; notwithstanding any such justice or justices of the peace is or are rated to or chargeable with the taxes, levies, or rates within any such parish, township, or place affected by any such act or acts of such justice or justices as aforesaid."

But sect. 3 provides, "That this Act, or anything therein contained, shall not authorize or empower any justice or justices of the peace for any county or riding at large to act in the determination of any appeal to the quarter sessions for any such county or riding, from any order, matter, or thing relating to any such parish, township, or place where such justice or justices of the peace is or are so charged, taxed, or chargeable as aforesaid; anything herein contained to the contrary in any wise notwithstanding."

By the 5 & 6 Vict. c. 57, s. 15, justices may act at any petty, special, or quarter sessions in matters in which the board of guardians of which he is an *ex officio* member is interested.

And by the 30 & 31 Vict. c. 115, s. 2, "a justice of the peace shall not be incapable of acting as a justice at any petty or special or general or quarter sessions on the trial of an offence arising under an Act to be put in execution by a municipal corporation, or a local board of health, or improvement commissioners, or trustees, or any other local authority, by reason only of his being, as one of several ratepayers, or as one of any other class of persons, liable in common with the others to contribute to or to be benefited by any fund to the amount of which the penalty payable in respect of such offence is directed to be carried, or of which it will form part, or to contribute to any rate or expenses in diminution of which such penalty will go."

There are also other enactments allowing magistrates sometimes to act, although interested, and which will be found under the proper titles.

## 3. THEIR JURISDICTION IN RESPECT OF THEIR NUMBER.

It is clear, that, whatsoever any one justice alone may do, the same also may lawfully be done by any two or more justices. (*Hatton's case*, 2 *Salk.* 477; *Dalt.* c. 6, s. 8; *R. v. Weale*, 5 *Car. & P.* 135.)

But, when a thing is appointed by statute to be done by or before one person certain, such thing cannot be done by or before any other; and by such express designation of one, all others are excluded, and their proceedings therein are *coram non judice*. (*Dalt.* c. 6; *Foster's case*, 11 *Rep.* 59, 64.)

An authority given by statute to *two* cannot be executed by one. (*Id.*, 4 *Rep.* 46.)

But by the 11 & 12 Vict. c. 43, s. 29, one justice of the peace may receive the original information or complaint in all cases of summary proceedings out of sessions, and grant a summons or warrant thereon to compel the attendance of witnesses preliminary to the hearing, even in cases where by statute the information and complaint must be heard and determined by two or more justices; and, after the hearing and determining, one justice may issue all warrants of distress or commitment thereon. (See the enactment and law, tit. "*Conviction*," Vol. I.)

And, independently of this enactment, it has been considered that, where justices act *ministerially*, it is not necessary, even in cases where *two* only can have jurisdiction, that they should meet together to do the act; and it is enacted by sect. 12 of the 11 & 12 Vict. c. 43, that complaints and informations for offences punishable upon summary conviction may be heard, tried, determined, and adjudged by any one justice of the peace for the county, place, etc., where the matter of such information shall have arisen, if there be no direction in any Act of Parliament on which the information is framed, or in other Acts in that behalf, as to more than one justice of the peace.

The warrants for apprehending persons on charges of indictable offences may now be issued by *one* or more justice or justices of the peace before whom such charges are made, by virtue of the 11 & 12 Vict. c. 42; and the like as to warrants issued on informations for offences punishable on summary conviction and on complaints in respect of orders by justices, under the 11 & 12 Vict. c. 43.

Where an Act of Parliament gives power to two justices finally to hear and determine any offence, or when they are to do any other *judicial* act, as adjudging the settlement of a pauper (*R. v. Coln St. Aldwin's*, *Burr. S. C.* 136), allowing the indentures of a parish apprentice (*R. v. Hamstall Ridware*, 3 *T. R.* 380), and such like, it is necessary that they should be both together, to hear the evidence, and to consult together, at the time when they give judgment. (*Billings v. Prinn*, 2 *Bla. Rep.* 1017; *Battye v. Gresley*, 8 *East*, 319; *R. v. Forrest*, 3 *T. R.* 38; *R. v. Great Marlow*, 2 *East*, 244; tit. "*Conviction*," Vol. I.; 11 & 12 Vict. c. 43, s. 29.)

## 7. Their Jurisdiction.

When two justices may act.

When one may act

When justices should act in the presence of each other.

## 4. THEIR JURISDICTION IN RESPECT OF THE OFFENCE OR INJURY COMPLAINED OF, AND THEIR DUTIES HEREIN.

To point out the various matters in which justices of the peace, in or out of sessions, have jurisdiction, as also their duties, would be to repeat all the matters already noticed in the other parts of this work. The reader, when desirous of ascertaining such jurisdiction and duty in any particular case, should look, therefore, at the particular title.

The judicial authority and duties of justices of the peace, in some instances, are of a *civil* kind, as, where they have to adjudicate between master and servant, etc., or to enforce the payment of rates, fines, penalties, etc.; in others, they act as *criminal judges*, with summary power to determine the guilt or innocence of the accused, by their own impressions of the evidence, and to punish the offender.

Jurisdiction and duties of, in general.

7. *Their Jurisdiction.*

The jurisdiction of a justice of the peace *out of sessions* as such is derived either from his commission, or, as is most usual, from some particular Act of Parliament.

By their commission.

By the first part of the commission it will be seen, *ante*, 111, that any one or more justices have, as well all the ancient power touching the peace which the conservators of the peace had at the common law, as also that whole authority which the statutes have since added thereto. (*Dalt.* c. 5, p. 15.)

It is certain, that, by virtue of the words in their commission, "*to keep and cause to be kept all ordinances and statutes for the good of the peace,*" they may execute all statutes whatsoever, made for the better keeping of the peace, and consequently those of Winchester and Westminster, and all others concerning the peace made before the reign of Edw. 3, in whose time (as hath been said) justices of the peace were first instituted: for all those statutes were expressly mentioned in the ancient commissions of the peace, and have always been undoubtedly taken to be included in these general words of the present commission. And yet none of the statutes which ordain the office of justices of the peace say anything concerning the execution of the said former statutes; so that the power of justices of the peace, in relation to those statutes, seems entirely to depend on the Queen's commission, and yet hath always been unquestionably allowed. From whence it appears, that regularly the Queen, by her commission, may authorize whom she pleases to execute an Act of Parliament. (2 *Hawk.* c. 8, s. 28.)

An inquisition of *self-murder*, if the body cannot be seen, and so not inquired of by the coroner, may be taken before justices of the peace; for it is a felony, and within the extent of their commission. (1 *Hale*, 414.)

So also, if a person hath committed treason, though the justices have no cognizance of it as treason, yet they have cognizance of it as a felony, and as a breach of the peace; and therefore a justice of the peace, upon information on oath, may issue his warrant to take the traitor, and may take his examination, and commit him to prison. (1 *Hale*, 580.) See further as to the meaning of the words "*of the peace,*" *ante*, 107.

The commission assigns the justices to keep the peace, "*and for the quiet government of our people;*" yet it seemeth that the subjects of a foreign prince coming into England, and living under the protection of our Queen, shall be subject to, and have the benefit of, the laws in respect of the local allegiance which they owe to her. (1 *Hale*, 93, 94.)

By statutes.

Besides the statutes relating to the peace named in the commission, there are also many other statutes which are not specified in the commission, and yet are committed to the charge and care of the justices of the peace, by the express words of such statutes: and all such statutes are to them a sufficient warrant and commission of themselves, although they be not recited in the commission, and are to be executed by them according as the same statutes themselves do severally prescribe and set down. (*Dalt.* c. 5. See *R. v. Lovelace*, 1 *Burr.* 445.)

Indeed, the far greater part of the labours of justices out of sessions arises from the duties imposed on them by particular statutes. How much, therefore, it becometh them to be well acquainted with the nature and construction of statutes before acting thereon. This certainly is no easy task at the present day, especially considering the vast number of statutes, and the uncertain wordings of most of them.

Forasmuch as most of the business of a justice of the peace consisteth in the execution of divers statutes, which cannot be sufficiently abridged, but that they will come short of the substance and body thereof, therefore, it shall be safest for the justices to have an eye to the statutes at large, and thereby to take their further and better directions for their whole proceedings: for (as Lord *Coke* observeth, *Pilfold's case*, 10 *Rep.* 117 b.) abridgments are of good and necessary use to serve as tables, but not to ground any opinion, much less to proceed judicially, upon them. (*Dalt.* c. 173.)

In like manner, it is not safe for them to trust altogether to the care and judgment of their clerks, in drawing warrants and other instruments; much less to the skill of parish officers in making copies of orders, and the like; but rather it is advisable to have good printed forms; and, instead of copies to be taken upon occasion, to make out duplicates.

A justice of the peace, before taking cognizance of a matter and acting either ministerially or judicially as a justice, should be cautious in ascertaining whether the case in which he is called upon to act be within the limits of his jurisdiction; whether it be one over which he has jurisdiction, which he may ascertain from his commission, or from the Act of Parliament giving him jurisdiction over it, as the case may happen; whether he may act alone without the aid of a fellow-justice; whether the case is laid before him in the limited time, by a proper and competent person, on proper information on oath, or otherwise.

The execution of the powers confided to justices of the peace in summary convictions is generally watched by the Courts with jealousy, such summary convictions being derogatory to the liberty of the subject; and all powers given in restraint of liberty must be strictly pursued. (*Per Cur.*, *Bracy's case*, 1 *Salk.* 349. And see *Wilkins v. Wright*, 2 *Cr. & M.* 201.)

## 7. Their Jurisdiction.

Summary powers watched with jealousy.

In some cases, the justice has a discretionary duty to take cognizance of the matter; in others, as is most usual, the duty is imperative.

Discretionary power.

Upon this discretionary power it may be observed, that, where an Act of Parliament gives power to the justices of the peace to take order in any matter *according to their discretions*, this shall be understood according to the rules of reason, law, and justice, and not by private opinion. (*Rook's case*, 5 *Rep.* 100. See 8 *Howell's St. Tr.* 55 (notis).)

It has been observed by Lord Mansfield, C.J., that this discretionary power, when applied to a Court of justice, means sound discretion, guided by law. It must be governed by rule, not by humour; it must not be arbitrary, vague, and fanciful, but legal and regular. (*R. v. Wilkes*, 4 *Burr.* 2539.) And Lord Kenyon said, in the case of *Wilson v. Rastall* (4 *T. R.* 757), "The discretion to be exercised by a Court or a judge is not a wild, but a sound discretion, and to be confined within those limits, within which an honest man, competent to discharge the duties of his office, ought to confine himself."

It should be also here observed, that the superior Court of Queen's Bench will never, or rather ought never to interpose against magistrates, unless they have acted from bad motives and *malá fide*; especially where they are intrusted with an absolute discretion. Where justices of the peace use due discretion, it would be of very dangerous consequences for the superior Court to interfere. (See *per* Lord Mansfield, C.J., *R. v. Hann*, 3 *Burr.* 1716.) Again, Lord Mansfield, C.J., has said, in *R. v. Young and Pitts* (1 *Burr.* 556), that, where justices of the peace have jurisdiction to act discretionarily, and act accordingly, the Court of Queen's Bench has no power or claim to review their reasons, by way of appeal from their judgments, or by way of overruling the discretion intrusted to them. But, if it clearly appear that justices of the peace have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have, consequently, abused the trust reposed in them, they are liable to prosecution by indictment or information, or even possibly by action, if the malice be very gross and injurious. But, if their judgment be wrong, yet their heart and intention pure, they cannot be punished if they act within their jurisdiction. (See *post*, 144.)

The abuse of a discretionary power should be more severely punished than the abuse of a power which is not discretionary. (*Per Ryder*, C.J., in *R. v. Justices of Nottingham*, *Say. Rep.* 216, 217.)

The principle, that, if a justice entertain a reasonable doubt of his

### 7. *Their Jurisdiction.*

jurisdiction, the Court will not compel him to do an act which may subject him to an action, has been established by various cases. "How," said *Abbott, C.J.*, in delivering judgment (in the case of *R. v. Broderip*, 7 D. & R. 861; 5 B. & C. 239, S. C.), "can we order a magistrate to do that which may subject him to an action? If a justice of the peace criminally forbears to discharge his duty, he is amenable for his conduct by information, as for a public offence; but that is a very different thing from commanding him to do that which may subject him to an action." (See further as to this, *post*, 150.)

To render more effective the duties of justices by giving them protection in the performance thereof in such cases as the above, and that the legality of any act to be done by them may be adjudged and the justice enabled to perform it without risk of any action or proceeding against him, it is enacted by sect. 5 of the 11 & 12 Vict. c. 44, that, where a justice of the peace shall refuse to do any act relating to his office as such justice, it shall be lawful for the party requiring such act to be done to apply to her Majesty's Court of Queen's Bench upon an affidavit of the facts for a rule calling upon such justice, and also the party to be affected by such act, to show cause why such act should not be done, and, if after due service, etc., the Court make the rule absolute, the justice on being served with such rule absolute shall obey it, and no action, etc., shall be commenced against him for doing the act. In *In re Clee and Osborne*, (21 L. J., M. C. 112), it was ruled that this section does not authorize the Queen's Bench to order justices to draw up one joint conviction instead of two separate convictions against each of two persons against whom a joint information has been laid, and heard and determined by the justices, and where the justices have not held their hands.

#### Imperative duty.

In most cases, a justice of the peace is imperatively called upon to act; and generally, where a statute directs the doing of a thing for the sake of justice, or the public good, the word *may* is the same as the word *shall*, and is imperative on the justice to proceed. (See *R. v. Barlow*, 2 Salk. 609; but see *R. v. The Bailiffs of Eye*, 4 B. & Ald. 271; where the words "it shall be lawful" were held to give a discretionary power; and see also *De Beauvoir v. Welch*, 7 B. & C. 278; 1 M. & Ry. 81, S. C.; and tit. "*Statutes*," Vol. V.) In such cases, if he refuse to act, and the case is clear, he may be compelled by rule. (See *post*, 150.)

#### Where matter of right in question.

As a general rule, where a charge brings property or title in question, justices have no jurisdiction to decide upon it. (*Reg. v. Burnaby*, 3 Salk. 217; 2 Ld. Raym. 900 S. C.; *R. v. Speed*, 1 Ld. Raym. 583; *Kinnersley v. Orpe*, 2 Dougl. 517.) Nor where the act complained of has been done under a claim of right fairly made and which might exist in law. In some cases they are expressly excluded from interfering in such a case by the statute giving them jurisdiction. As by sect. 52 of the 24 & 25 Vict. c. 97 (malicious injuries to property), any damage and injury to public or private property, charged as malicious, is subject to summary punishment; but this is not to extend to a party who acts under a fair and reasonable supposition that he had a right to do the act complained of. And it is a general rule that a *bonâ fide* claim of a right to do what is the subject of complaint, if this right may be one of a legal nature, ousts the summary jurisdiction of justices to proceed with the inquiry into such complaint. (*Reg. v. Cridland*, 27 L. J., M. C., N. S. 28.) But such a claim, though *bonâ fide*, if it be in respect of some vague right which would be no answer to an action at law, does not oust the summary jurisdiction. (*Leatt v. Vine*, 30 L. J., N. S., M. C. 207.) The justices themselves must decide this question of their jurisdiction, and from the circumstances of each case determine whether the act was done under a fair and reasonable claim of right or title and of such a right or title as is known to the law. If they reject the claim, some colour and evidence for so doing must be before them (*Reg. v. Nunneley*, 27 L. J., N. S., M. C. 260); but, if the party satisfy them that there is a *bonâ fide* intention

to claim a legal title or right, the charge before them will proceed no further. (*R. v. Wrottesley*, 1 B. & Ald. 648.) For the jurisdiction is not to be ousted by a mere fictitious pretence of title or right, such as by asserting such a right, or proving that others had asserted the same right as well, or that several others had done the same act and used the same colour of right as that relied on. (*R. v. Dodson and others*, 9 Ad. & Ell. 704.) In some cases the statute expressly empowers justices to interfere. In *Coster v. Wilson*, 3 M. & W. 411, it was held, that justices have jurisdiction under the 11 Geo. 2, c. 19, s. 4, to inquire into, and adjudicate on, an information for the alleged fraudulent removal of goods by a tenant, although it appears that the property in the premises is disputed, and that the tenant had paid the rent to one of the claimants.

In proceedings before justices of the peace out of sessions, where they are acting in a ministerial and not in a *judicial* capacity, neither the prisoner on the one hand, nor the prosecutor, by whom the charge is made, on the other, has any right to have any legal adviser present; the magistrate has a right to exercise his own discretion in such cases, not to commit the party, unless he thinks there is a *prima facie* case made out by witnesses whom he may conceive entitled to a reasonable degree of credit. (*Cox v. Coleridge*, 2 D. & Ry. 86; 1 B. & Cres. 37, S. C.) If the person charged be really innocent, he would be competent, however ignorant, to suggest to the magistrate such topics as he thought would be of advantage to him, in order that the magistrate might sift the story to the bottom; and the magistrate, standing indifferent between the one side and the other, is the only legal adviser which the party has a right to insist shall be present at the time of the inquiry. There are many cases in which, in the exercise of a just discretion, the magistrate would give to the party the privilege of having a professional person present on his behalf; but that is a privilege only, and not a right, and the magistrate is to exercise his own discretion upon the subject. No person has a right to say, against the will of the magistrate, "I shall force myself upon you; for I have a right to conduct the case on the part of the prisoner, against whom the charge is made." (*Per Cur., Ib.*) The justice might forcibly turn him out of the room, and exclude his presence during the investigation of the case, it being a *preliminary investigation* only. Thus, in the case of *R. v. Borron*, (3 B. & Ald. 432), it was decided, that, on an application before justices against a party not in custody, an attorney has no right to be present, except as a matter of courtesy; and again, in the case of *R. v. Justices of Staffordshire* (1 Chit. Rep. 217), where a criminal information was moved for against two justices, on the ground of their having deprived the defendant of legal assistance, by excluding his attorney from the justice-room (no corrupt motive being imputed to the magistrates), the Court of King's Bench refused to interfere; and *Bayley, J.*, said, it might be a different thing where counsel are employed, but an attorney at all events has no right to be present.

Sect. 19 of the 11 & 12 Vict. c. 42, enacts that the room or building in which a justice or justices of the peace take the examination and statement in informations for indictable offences shall not be deemed an open Court for that purpose, and that it shall be lawful for such justice or justices in his or their discretion to order that no person shall have access to or be or remain in such room or building without the consent or permission of such justice or justices if the ends of justice will be best answered by so doing.

On the other hand, all persons have a right to be *present* before a justice of the peace, while acting in a *judicial* character, as on the hearing of a conviction or the like. And in a case where, on the hearing of a conviction, a magistrate had, without any specific reason, caused a party who claimed a right to be present to be removed from the justice-room, where such a proceeding was going on, it was held, that he was liable to an action of trespass. (*Daubney v. Cooper*, 10 B. & C. 237.)

## 7. Their Jurisdiction.

Right of counsel and attorneys, etc., to act before justices.

Place of holding the inquiry.



### 7. *Their Jurisdiction.*

Thus, though, in taking examinations upon a charge of an indictable offence it may be essential to the ends of public justice that the examination should be strictly private, yet the same reasons do not hold when a magistrate is acting *judicially*; the accused must then make his defence, as the magistrate has to decide upon his guilt, and award the punishment. In such cases, in the language of Lord *Kenyon*, in *R. v. Stone* (1 *East*, 649), "justice requires that he should be duly summoned and fully heard."

Counsel and attorneys may now attend under the provisions of the 12th sect. of the 11 & 12 Vict. c. 43, which enacts that the room or place in which a justice or justices of the peace shall sit to hear and try any complaint or information for offences punishable upon summary conviction shall be deemed an open and public Court to which the public generally may have access, so far as the same can conveniently contain them, and the party against whom such complaint is made or information laid shall be admitted to make his full answer and defence thereto, and to have the witnesses examined and cross-examined by counsel or attorney on his behalf. And every complainant or informant in any such case shall be at liberty to conduct such complaint or information respectively, and to have the witnesses examined and cross-examined, by counsel or attorney on his behalf.

Justices should make a record of proceedings.

In all cases where justices may hear and determine out of sessions (viz. on their own view, or confession, or oath of witnesses), the justices ought to make a record in writing under their hands of all the matters and proofs; which record, notwithstanding, in many cases, they may keep by them. (*Dalt.* c. 115.) Generally speaking, all records ought to be on parchment, but there does not appear to be any positive law to this effect; and therefore they are good if written on paper. (1 *Inst.* 260. See tit. "*Conviction*," *Vol. I.*)

Jurisdiction should appear on record.

Where a special authority is given to justices out of sessions, it ought to appear in their orders and convictions, etc., that such authority was exactly pursued. (*Inter the Inhabitants of the Parish of Chittington*, 2 *Salk.* 475; *R. v. York*, 5 *Burr.* 2686; *Wilkins v. Wright*, 2 *Cr. & M.* 191. See tits. "*Conviction*," *Vol. I.*, "*Order*," *post.*)

Convictions.

The general powers and duties of a justice of the peace attending the conviction of an offender, and the proceedings connected therewith, are fully noticed under tit. "*Conviction*," *Vol. I.* Justices should lodge the conviction with the clerk of the peace to be filed among the records of the general quarter sessions of the peace (11 & 12 Vict. c. 43, s. 14).

Orders.

As to the powers and duties of a justice of the peace in making an order, see tit. "*Order*," *post.*

Informers' oath.

Where a statute appoints a conviction to be on the *oath of one witness*, this ought not to be by the single oath of the informer; for, if the same person shall be allowed to be both prosecutor and witness, it would induce profligate persons to commit perjury for the sake of the reward. (*R. v. Stone*, 2 *Ld. Raym.* 1545. See further tits. "*Conviction*," *Vol. I.*, "*Evidence*," *Vol. II.*)

Confession.

Where a statute directeth that a person shall be convicted of an offence upon the *oath of one or more witnesses*, and saith nothing of the *confession* of the party, yet, if the offender shall, before the justice, confess the offence, he may be convicted upon such confession; for confession is stronger evidence than the oath of witnesses. (*Dalt.* 109, 162; *R. v. Gage*, 1 *Stra.* 546. See further tit. "*Conviction*," *Vol. I.*) And, as regards the duty of magistrates in taking the confessions of parties, see tit. "*Sessions*," *Vol. V.*

Number of witnesses.

A statute allowing a conviction on the oath of *one witness* shall be understood to denote *one witness or more*. And *two witnesses* shall denote *two or more witnesses*.

Where, in Acts of Parliament directing justices to convict, etc., parties, the term *credible witness* is used, it bears no precise or legal signification; but the magistrate is to judge, like the jury on a trial, how far the witness is sufficiently to be believed, to warrant the conviction, etc. (*Windham v. Chetwynd*, 1 Burr. 418; *Peake, Evid.* 124.) And see further, as to the credibility of witnesses, tit. "*Evidence*," Vol. II.

### 7. Their Jurisdiction.

Credible witness.

In all cases where justices may take examinations, or rather accusation or proof, though the statute does not expressly set down that it shall be upon oath, yet it shall be intended that it shall be upon oath. (*Dalt. c. 115.*) And by sect. 15 of the 11 & 12 Vict. c. 43, in cases of information for offences punishable on summary conviction, every witness at the hearing thereof shall be examined on oath or affirmation, and the justice or justices before whom such witness shall appear for the purpose of being so examined shall have power to administer to every such witness the usual oath or affirmation. And by sect. 17 of the 11 & 12 Vict. c. 42, in cases of charges for indictable offences the justice or justices before whom any witness shall appear therein shall before such witness is examined administer to such witness the usual oath or affirmation which such justice or justices shall have full power and authority to do. See further, as to the power and duty of a justice as regards oaths, tits. "*Oath*," *post*; "*Sessions*," Vol. V. As to the affirmation of Quakers and other declarations, etc., see *Ib.* and "*Evidence*," Vol. II.

Power to administer an oath.

In cases of charges for offences punishable on summary conviction, justices' duties as to issuing summonses and warrants to bring parties before them, and as to the mode of proceeding at the hearing of the charge and information, are regulated by the 11 & 12 Vict. c. 43. See tits. "*Summons*," "*Warrant*," Vol. V.

Summonses and warrants.

Their duties as to issuing process to bring parties before them, and the mode of taking and signing the depositions, and of conducting the hearing in informations for indictable offences, are regulated by the 11 & 12 Vict. c. 42. See tit. "*Sessions*," Vol. V.

Depositions.

Where by statute justices of the peace have power to hear and determine an offence in a summary way, it is necessarily implied and supposed as a part of natural justice, that the party be first cited, and have opportunity to be heard and answer for himself. (1 *Hawk. c. 64, s. 60*; *Bane v. Methuen*, 2 Bing. 63; 9 *Moore*, 161, S. C.; *Painter v. Liverpool Gas Company*, 3 Ad. & El. 433; *R. v. Justices of Stafford*, 1 H. & W. 328.) And in summary convictions the party ought to be heard, and for that purpose ought to be summoned in fact; and, if the justice proceed against a person without summoning him, it might be a misdemeanour in him, for which an information would lie. (*Reg. v. Dyer*, 1 Salk. 181; *R. v. Venables*, 2 Ld. Raym. 1407; *R. v. Allington*, 2 Str. 678.) Where a party appears without summons, it generally supersedes the necessity of one. As to their duty in summary proceedings to grant a stated case for one of the Courts at Westminster on appeal, and the time and mode of doing so under the 20 & 21 Vict. c. 43, see tit. "*Conviction*," Vol. I.

Under sect. 27 of the 11 & 12 Vict. c. 42, after the completion of the examination and before the first day of the assizes or sessions or other first sitting of the Court at which any person is to be tried, such person may require and shall be entitled to have copies of the depositions on which he shall have been committed or bailed.

Copies.

As to the power of a magistrate to apprehend a party without warrant, see tit. "*Arrest*," Vol. I.

Power to apprehend without warrant.

As to his power to issue a search warrant, and as to warrants in general, see tit. "*Warrant*," Vol. V.

Search warrant.

His powers and duties as to bailing the accused party are to be found under tit. "*Bail*," Vol. I.

Bail.

7. *Their Jurisdiction.*

As to the powers and duties of a justice of the peace in taking recognizances, see tit. "*Recognizance*," Vol. V. and the 11 & 12 Vict. c. 42, s. 20.

Recognizances.  
Compelling attendance of witnesses.

As to a justice's power to compel a party to give bail to appear as a witness at the assizes, see *Evans v. Rees* (12 Ad. & E. 55); tits. "*Bail*," Vol. I., "*Sessions*," Vol. V.

In respect to granting a *supersedeas* in bailable offences, *Ashhurst, J.*, said that the legality of it is very doubtful; and that, at any rate, it cannot hold where the party is convicted in the first instance as a rogue and vagabond, and committed in *execution*; for there he is clearly not bailable. (*R. v. Brooke*, 2 T. R. 195.) Where, indeed, two justices were surprised into making an order for the removal of a pauper, it was held that they might issue an order of *supersedeas*, commanding the overseers to return the former order to be cancelled, to prevent the charge of an appeal. (*Pancras v. Rumbald Parish*, 1 Stra. 6.)

Amendment.

As to the power of a justice to amend his proceedings, see tits. "*Amendment*," "*Conviction*," Vol. I., "*Order*," post.

Commitment.

It is said that, whosoever a justice of the peace is empowered, by any statute, to bind a person over, or to cause him to do a certain thing, and such person being in his presence shall refuse to be bound, or to do such thing, the justice may commit him to the gaol, to remain there till he shall comply. (2 Hawk. c. 16, s. 2.)

A magistrate has, it seems, a power to commit a person guilty of a contempt, by insulting him or otherwise, when acting in his *judicial* capacity, though not so when he is acting merely *ministerially*. (See *R. v. Revel*, 1 Stra. 421; *Burdett v. Abbott*, 14 East, 85; *R. v. James*, 5 B. & Ald. 894; 1 D. & R. 559, S. C.) And see further, as to the form of such commitment, tit. "*Commitment*," Vol. I.

A justice may commit for a manifest breach of the peace in his view, or for an apprehended breach, without warrant or information. So, also, he may commit on a complaint not in writing, though strictly it should be so. (*Brookshaw v. Hopkins*, *Lofft*, 240, 243.)

To what prison.

The words "*in our prison*," in the justice's commission, mean the Queen's prison; such prison is the common gaol of the county. But, by the 11 & 12 Vict. c. 42, s. 25, and the 11 & 12 Vict. c. 43, ss. 23 & 24, the justices may commit criminals and persons charged with small offences, either to the gaol or to the house of correction, in their discretion, for such offences, or for want of sureties. (See *Ex parte Aston*, 13 L. J., N. S., M. C., and tit. "*Gaols*," Vol. II.)

Time of imprisonment.

When a statute appoints imprisonment, but limits no time *when*, it shall be immediately. (*Bonham's case*, 8 Rep. 119.)

When a statute appoints imprisonment, but limits no time *how long*, the prisoner, in such case, must remain at the discretion of the Court. (*Dalt.* 410.)

Where an offender shall, by a justice of the peace, be committed to the house of correction, for an offence cognizable before him out of sessions, and the time and manner of punishment is not by law expressly limited, he may commit him to the house of correction, there to be kept to hard labour, until the next general or quarter sessions, or until discharged by due course of law. (17 Geo. 2, c. 5, s. 32.)

The penal statutes favourably construed.

As a practical rule, *the law favours liberty* in the construction of a penal statute; and, where the interpretation is dubious, that sense must be pursued (all other things being equal), which is more beneficial to the subject or the party suffering. Thus, where an Act directs that the justices shall commit an offender to prison for twelve *months*, the justices may not alter the words and commit him for a *year*; for, in this respect, formerly twelve months and one year were not the same. But the 13 & 14 Vict. c. 21, has by s. 4 enacted that in all Acts the word "*month*" shall

be taken to mean calendar month, unless words be added showing lunar month to be intended. This distinction is thus gone between twelve months and a year, unless the statute using the word month limits it to twenty-eight days. Yet it would always be more fitting to use the words of the statute which impose the term of imprisonment, whenever justices are awarding the punishment under it.

The other laws relative to the power and duty of a magistrate in committing a party will be found under tit. "*Commitment*," Vol. I.

Statutes frequently empower justices of the peace to give damages to the injured party, as in the case of common assaults (see tit. "*Assault*," Vol. I.), or malicious and trifling injuries to property (see tit. "*Malicious Injuries to Property*," *post*). In each particular case, the extent of the injury is to be ascertained by the justices, and compensation awarded only in proportion to the injury proved. (*R. v. Harpur*, 1 D. & R. 222.) Upon an indictment or other criminal prosecution, no damages can be given to the party grieved; but it is every day's practice, in the Court of Queen's Bench, to induce defendants to make satisfaction to the prosecutors, by intimating an inclination on that account to mitigate the fine due to the King. (2 *Hawk.* c. 25, s. 3.)

7. *Their Jurisdiction.*

Damages.

Where a statute gives *treble damages*, the justices are not to assess the damages, and then treble them; but the jury ought to find the damages, and then the justices are to treble them. (*Bumpstead's case*, Cro. Car. 449; see also, *Buckle v. Bewes*, 4 B. & C. 154; 6 D. & R. 1, S. C.)

Treble damages.

As to mitigating penalties, see tit. "*Conviction*," Vol. I. Where a statute gives a discretionary power of mitigating penalties, it is a general rule that there the legislature must be taken to have intended to have placed the matter under the jurisdiction of the justices of the peace. (*Reeve v. Poole*, 4 B. & C. 156.)

Mitigating penalties.

Where any complaint shall be made before a justice, and a warrant or summons shall issue in consequence thereon, the justice, upon hearing and determining the matter, may award *costs* to either party; and, if such costs, in cases of summary conviction or of orders, are awarded to be paid by the defendant to the prosecutor or complainant, the sum so allowed shall be specified in the conviction or order, and be recoverable in the same manner and under the same warrants as the penalty or sum of money adjudged to be paid; and, if there be no such penalty or sum to be recovered, then such costs are to be recovered by distress.

Costs.

If the information or complaint is dismissed, the justice or justices may order, in and by the order of dismissal, costs to be paid by the prosecutor or complainant to the defendant, and recoverable by distress. (11 & 12 Vict. c. 43, s. 18.)

See further the law as to costs, tit. "*Costs*," Vol. I.

In all cases where a justice is required by any Act of Parliament to issue a warrant of distress for the levying of any penalty inflicted, or any sum of money directed to be paid by such Act, and also in all cases in which no mode of raising the penalty or sum is provided, it shall be lawful for such justice to grant a distress warrant, which may be backed and executed out of his jurisdiction; provided that, whenever it appears to the justice to whom application is made for a distress warrant, that the issuing thereof would be ruinous to the defendant and his family, or that by the confession of the defendant, there are no goods whereon to levy, the justice may, if he thinks fit, commit the defendant as if a distress warrant had issued and no goods had been found whereon to levy. (11 & 12 Vict. c. 43, s. 19; and see tit. "*Warrant*," Vol. V.)

Distress and sale.

And justices issuing their warrants of distress and sale for penalties or sums payable under orders by them, according to the form given by the 11 & 12 Vict. c. 43, s. 19, for such warrants (Schedule N., 1, 2), are empowered to direct the officer executing the same to pay the money arising from the sale of the goods to the clerk of the justices of the peace for the

8. *How, and in what Cases, punished criminally.* particular division, to be paid and applied by him as by law directed, and to render any overplus to the person whose goods have been distrained, on demand.

See further, tit. "*Costs*," Vol. I., tit. "*Warrant*," Vol. V.

Overplus.

And in all cases of *distress and sale*, the *overplus* must be returned to the owner, after the sum or sums to be thereout deducted shall be satisfied and paid.

Second offence.

An Act inflicting a penalty for a *second offence* must always be understood after conviction and judgment for the first offence; and the second offence must be committed after the first conviction, and judgment thereupon given; for it doth not appear to be an offence until judgment by proceeding of law be given against the offender. (2 *Inst.* 468.)

Estreating fines.

If, upon conviction, the offender is convicted in a fine or forfeiture, the justice is required by the 3 Geo. 4, c. 46, s. 2, to certify the amount and particulars of the fine or forfeiture to the clerk of the peace. (See tit. "*Fines and Forfeitures*," Vol. II.)

Adjournment of proceedings

If justices of the peace adjourn their proceedings to a day subsequent to the repeal of an Act of Parliament under which they act, their jurisdiction will cease. (*R. v. London Justices*, 3 *Burr.* 1456.)

Binding to good behaviour.

The power of justices to bind to good behaviour is founded on the stat. 34 Edw. 3, c. 1, and will be found recited, tit. "*Surety of the Peace*," Vol. V.

#### 5. JURISDICTION OF, EX OFFICIO.

Taxes—Land tax.

Justices of the peace are empowered to act as commissioners of assessed taxes and land tax, although not specially named as such. (7 & 8 Geo. 4, c. 75, s. 1; 3 & 4 Will. 4, c. 95; 45 Geo. 3, c. 48, s. 3; and see 52 Geo. 3, c. 95, s. 31.)

Turnpike roads.

Justices of the peace for the county through which a turnpike-road passes, may act as trustees or commissioners of the road, as if they were named as such in the turnpike Act relating to the road. (3 Geo. 4, c. 126, s. 61; and see the 5 Geo. 4, c. 69, which extends the former Act to ridings.) And by the 4 Geo. 4, c. 95, s. 34, without the necessity of previously qualifying; and by the 25 & 26 Vict. c. 61, s. 9, they are members of the highway board of the district in which they reside. See tit. "*Highways*," Vol. II.

Guardians of poor.

Justices of the peace residing within parishes which have been formed into an union by the poor-law commissioners within the county for which they are justices, shall be *ex officio* guardians of the poor of such union; and they may, if they think fit, act as members of the board of guardians, in addition to and in like manner as those guardians who are elected. (4 & 5 Will. 4, c. 76, s. 38.) And, where a single parish is placed under a board of guardians by the poor-law commissioners, every justice of peace resident therein, and acting for the county, riding, or division in which such parish is situated, shall be, and may act as, an *ex officio* member of such board. (*Id.* s. 39.) But a justice residing within a poor-law union is only guardian *ex officio* under the Act while he is acting as such guardian. (*R. v. Cant*, 1 *Car. & M.* 521.) See tit. "*Poor*," Vol. IV.

### VIII. How, and in what Cases, punished criminally.

Indictment or information, when it lies against justices.

*When Information or Indictment will lie.*—Where a magistrate acts in his office with a partial, malicious, or corrupt motive, he is guilty of a misdemeanour, and may be proceeded against by indictment or criminal

information in the Queen's Bench, which exercises a general supervision over all justices of the peace. It is most usual to proceed in such a case by criminal information, in preference to an indictment; but sometimes, where there has been delay in the application, or a jury may be more fit to apply to than the Court, then an indictment should be the form of remedy. In the recent case of *R. v. Nott* (12 L. J., N. S., M. C. 143), it was considered that an indictment would lie against justices for administering unlawful oaths.

The Court of Queen's Bench will grant an information against a justice, as well for refusing or criminally neglecting to act on any given occasion, as for misconducting himself in his office.

The party grieved may also apply to the Court of Chancery to put him out of the commission. (*Crompt. 7; Ex parte Rook, 2 Atk. 2.*)

8. *How, and in what Cases, punished criminally.*

Any specific fraud or misconduct imputed to magistrates, in proceeding notwithstanding the issuing of a *certiorari*, may be the ground for a criminal proceeding against them; and Lord *Kenyon* said he believed there were instances in which a criminal information had been granted against magistrates acting in sessions. (*R. v. Inhabitants of Seton, 7 T. R. 374.* And see *R. v. Seaford JJ., 1 W. Bl. 432.*)

Putting him out of commission.

Fraud or misconduct.

But in *R. v. Skinner* (T., 12 Geo. 3, *Lofft*, 55), on motion to quash an indictment against — Skinner, Esq., one of his Majesty's justices of the peace of the town of Poole, for scandalous words spoken by him in a general sessions of the county, in which he said to the grand jury, "You have not done your duty; you have disobeyed my commands; you are a seditious, scandalous, corrupt, and perjured jury;" Lord *Mansfield*, C.J., said, "Neither party, witness, counsel, jury, or judge can be put to answer, civilly or criminally, for words spoken in office. If the words spoken are opprobrious or irrelevant to the case, the Court will take notice of them as a contempt, and examine on information. If anything of *mala mens* is found on such inquiry, it will be punished suitably."

The Court refused a criminal information against a magistrate for returning, to a writ of *certiorari*, a conviction of a party in another and more formal shape than that in which it was first drawn up, and of which a copy had been delivered to the party convicted by the magistrate's clerk, the conviction returned being warranted by the facts. Lord *Kenyon*, C.J., commended the magistrates in this case, and observed that it was matter of constant experience for magistrates to take minutes of their proceedings, without attending to the precise form of them at the time when they pronounce their judgment, to serve as memoranda for them to draw up a more formal statement of them afterwards, to be returned to the sessions; and that it was by no means unusual to draw up the conviction in point of form after the penalty had been levied under the judgment, nor was there any legal objection to this method, provided the facts would warrant them in stating what they did. (*R. v. Barker, 1 East, 186.*)

Some general rules as to where an indictment or criminal information will lie against a justice of the peace may be collected from the following cases:—

Justices will never be punished criminally for a mere error in judgment, nor in any case unless it appears they have acted from an oppressive, dishonest, or corrupt motive, under which fear or favour are included. (*In re Fentiman, 4 Nev. & M. 126; R. v. Heming, 5 B. & Ad. 666; 2 Ad. & El. 127, S. C.; R. v. Badger, 12 L. J., N. S., M. C. 66.*)

Error in judgment.

In *R. v. Young and Pitts* (1 Burr. 556), a motion was made for an information against the defendants, for arbitrarily, obstinately, and unreasonably refusing to grant a licence to one Henry Day to keep an inn at Eversley, Wilts. Lord *Mansfield*, C.J., declared, "That this Court has no power or claim to review the reasons of justices of the peace, upon which they form their judgments in granting licences, by way of appeal

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from their judgments, or overruling the discretion intrusted to them. But, if it clearly appears that the justices have been partially, maliciously, or corruptly influenced in the exercise of this discretion, and have, consequently, abused the trust reposed in them, they are liable to prosecution by indictment or information, or even possibly by action, if the malice be very gross and injurious. If their JUDGMENT be wrong, yet their HEART and INTENTION pure, God forbid that they should be punished." And he declared that he should always lean towards favouring them, unless partiality, corruption, or malice clearly appeared. And having gone through all the particulars, both of the charge and of the defence, he concluded with declaring it as his opinion that there was not sufficient ground for a criminal charge against these justices. *Dennison, J.*, said, "It must be *clear* and *apparent* partiality, or wilful misbehaviour; to induce the Court to grant an information; not a mere error in judgment." And, by the Court unanimously, the rule was discharged with costs.

In the case of *R. v. Borron* (3 *B. & Ald.* 432), it was considered that, where a criminal information is applied for against a magistrate, the question for the Court is not whether the act done be found, on investigation, to be strictly right or not; but whether it proceeded from an unjust, oppressive, or corrupt motive (amongst which fear and favour are generally included), or from mistake or error only; and that, in the latter case, the Court will not grant the rule.

In *R. v. Cox* (2 *Burr.* 785), on showing cause why an information should not be granted against the defendant, being a justice of the peace, for refusing to receive an information against a baker for exercising his trade on a Sunday, the Court declared that they would never grant an information against a justice for a mere error in judgment. But in this case they were of opinion that the justice had acted right in refusing; and they ordered the rule to be discharged with costs.

In *R. v. Palmer and Baine, Esquires, and others* (2 *Burr.* 1162), upon showing cause why an information should not be granted against two justices of the peace and others not justices for a misdemeanour relating to the conviction of a poacher and the circumstances attending it; the Court thought proper, on consideration of the affidavits, to discharge the rule as to all the defendants, with costs to be paid to the justices, but without costs as to the others. And they were, upon this occasion, most explicit in their declaration that, even where a justice acts *illegally*, (which, however, was not the present case), yet, if he has acted *honestly and candidly, without oppression, malice, revenge, or any bad view or ill intention whatsoever*, the Court will never punish him in this extraordinary mode by an information, but leave the parties complaining to their ordinary legal remedy or method of prosecution, by *action* or by *indictment*.

So, in *R. v. Jackson and another* (1 *T. R.* 653), *per Cur.*—Wherever magistrates act uprightly, though they may mistake the law, no information will be granted against them. But, if they act improperly and knowingly, information shall be granted: as in the case of *R. v. Holland and another* (1 *T. R.* 692), and in *R. v. Filewood and another*, for granting an ale licence, previously refused by other justices upon good grounds, informations were granted.

See other cases, tit. "*Alehouses*," *Vol. I.*; *R. v. Baylis*, 3 *Burr.* 1318; *R. v. Parkyns*, 3 *B. & Ald.* 668.

Acting partially or corruptly.

On the other hand, in *R. v. Athay* (2 *Burr.* 653), on showing cause why a rule should not be made absolute, for an information against a justice for a misdemeanour in refusing to grant a licence to one Francis Simes (who had been licensed for several preceding years) to sell ale, as usual; it appeared that one of the grounds upon which this rule had been obtained was, that the only reason why the licence was refused him was his declining to pay a sum of money (*viz.* £5) which was claimed

of him upon a distinct and collateral account, and which he denied to be due from him, the payment of which sum of money was (as he alleged) insisted upon by the justice, as a condition precedent to his granting the man a licence. The Court were unanimous that the allegation appeared to be false in fact; but, at the same time, they declared explicitly that the justices have no sort of authority to annex any such conditions to the grant of these licences.

In *R. v. Williams and Davis* (3 Burr. 1317), an information was granted against the defendants, justices of the peace for the borough of Penryn, for refusing to grant licences to those alehouse keepers who voted against their recommendation of candidates for members of Parliament for that borough. It appeared that they had acted very grossly in this matter, having previously threatened to ruin these people, by not granting them licences, in case they should vote against those candidates whose interests these justices themselves espoused, and having afterwards actually refused them licences upon this account only. And Lord Mansfield declared that the Court granted this information against the justices, not for the mere refusal to grant the licences (which they had a discretion to grant or refuse, as they should see to be right and proper), but for the corrupt motive of such refusal, for their oppressive and unjust refusing to grant them, because the persons applying for them would not give their votes for members of Parliament, as the justices would have had them.

An information against the justices of the town of Nottingham was granted by Lord Hardwicke, for refusing to grant licences for twenty public-houses, to the occupiers of which licences had been granted for several preceding years. It appeared that the persons who kept these houses had voted at the last election for the town for the candidates opposed to those whose interests the justices had espoused. His lordship said, "The abuse of such a discretionary power ought to be more severely punished than the abuse of a power which is not discretionary. It appears in this case to have been very grossly abused; for it is not probable that the occupiers of twenty houses should have all so misconducted themselves at the same time, as to render it improper to grant them licences." (*R. v. Justices of Nottingham, Sayer's Rep.* 216-17.)

In *R. v. Hann and Price, Justices of the Peace for the Borough of Corfe Castle* (3 Burr. 1716), on shewing cause against an information which had been prayed for against the defendants, for a misdemeanour in the execution of their office, in refusing to grant a licence to sell ale to one Ingram, an innkeeper in that borough, *merely from a motive of resentment* against him, for having espoused an opposite interest in the election for members of that borough; the defence was, that they did not act from any resentment or corrupt motive, but solely because Ingram was an improper person, and had kept a disorderly house, and continued to keep it after full notice to the contrary, and, in particular, that he encouraged gaming and cockfighting at his house. Lord Mansfield, C.J., said, "The Court should never interpose against magistrates, unless they have acted from bad motives and *malâ fide*; especially in such a case as this, where they are entrusted with an *absolute discretion*; but, for that very reason, this is the strongest case for the interposition of the Court, if it appear that they *have* acted upon corrupt motives. If it did appear clearly that this man kept a disorderly house, it would be a reason against the Court's interposing against the justices. But this does *not* clearly appear." And he declared it to be of very dangerous consequence to permit the due discretion of the justices to be influenced by considerations of this kind. The Court made the rule absolute.

8. *How, and in what Cases, punished criminally.*

If a justice of the peace improperly refuse to act, an information will be granted against him. (See instances, tit. "*Alehouse*," Vol. I.) Refusing to act.

By the 1 Geo. 1, c. 13, s. 11, it was enacted that two justices might



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summon any person to take the oaths before them; and, if they did not appear, then, on oath of serving such summons, the justices were to certify the same to the quarter sessions, where, if the party so summoned did not appear to take the oaths, he should stand convicted of recusancy. The defendants were justices of the peace, and issued their summons accordingly; but coming afterwards to understand that the party was a gentleman of fashion, and not suspected to be against the government, lest a transaction of this nature should be an imputation upon him, they refused to give the prosecutor his oath of the service of such summons, that the matter might go no further. And upon motion for an information against them, the Court declared that the justices had no discretionary power to refuse to put the Act in execution, and therefore granted an information against them. (*R. v. Newton and others*, 1 *Stra.* 413.)

But the most usual way of compelling them to execute their office in any case is by applying to the Queen's Bench for a rule to compel them to act. (See *post*, 150.)

False return to mandamus.

In *R. v. Justices of Lancashire* (1 *D. & R.* 485, n.), it was made a question, but not decided, whether a criminal information will lie against justices for making a false return to a mandamus, unless the return is corruptly and wilfully false. (*Case of the Surgeons' Company*, 1 *Salk.* 374; 2 *Hawk. c.* 26, s. 1.)

Other misbehaviour.

An information may be obtained against a mayor for wilfully absenting himself from sessions, which could not be held without his presence (*R. v. Fox*, 1 *Stra.* 21; 2 *Hawk. c.* 26, s. 9; *Bac. Abr.*, "Informations" (B), *in notis*); when not, see *R. v. Corry* (5 *East*, 372); or, against two justices, for neglecting to put an Act of Parliament in execution, from favour and partiality to an individual (*R. v. Newton*, 1 *Stra.* 413); or, against a justice, for singly taking an examination, preparatory to making an order of removal; and against two others for signing the order, as if it had been taken before them all, without either summoning the party demanding security, or entering into the merits of the question (*R. v. Wykes, Andr.* 238-9; 2 *Stra.* 1092, *S. C.*); or, against a justice, who, from illegal motives, discharges a person committed by another under the Vagrant Act (*R. v. Brooke*, 2 *T. R.* 190; 2 *Hawk. c.* 26, s. 9; *Bac. Abr.*, "Informations" (B), *in notis*); or, against a justice, who improperly exceeds his authority in bailing a person accused of felony (*R. v. Clarke*, 2 *Stra.* 1216); or, who from improper motives refuses to bail a prisoner. (*R. v. Badger*, 12 *L. J., N. S., M. C.* 66; tit. "Bail," Vol. I.)

Specific grounds must be laid against the magistrate.

The Court will not grant a rule *nisi* for a criminal information against justices on the following grounds only, viz., that they held a party to perjury without any legal information or evidence, and that they, without legal evidence, or any opportunity given him to defend himself, bound him over to the sessions, which had no jurisdiction, to answer such charge, not binding over any prosecutor; that their conduct was in some other respects irregular, and that the party applying believes them to have acted in collusion with persons whom he had intended prosecuting, to deter him from such prosecution. More distinct evidence is requisite that the justices acted from corrupt motives. (*Ex parte Fentiman*, 4 *Nev. & M.* 126; 2 *Ad. & El.* 127, *S. C.*) And in every case the corrupt and improper motives of the justice must be made plainly to appear on the affidavit for the information. Moreover, the misconduct must be in regard to his office as magistrate. (*R. v. Arrow-smith*, 2 *Dowl., N. S.* 704; *Ex parte Lee*, 7 *Jur.* 441.)

Indictment will lie.

If there be two sets of magistrates, as for a county and a borough, having a co-ordinate jurisdiction in that borough, and one of the two sets appoint a meeting for granting alehouse licences, and when the day arrives refuse a licence to an applicant for one, and then the other set

of magistrates, having subsequently to the prior appointment, but before the first licensing day, appointed a future day for the same purpose, license on that day the person to whom on a former day a licence had been refused, it is an indictable offence. (*R. v. Sainsbury*, *M. T.* 32 Geo. 3, 4 *T. R.* 451.) And *per Ashurst, J.*—The jurisdiction of holding the meeting directed by the 26 Geo. 2, attached in those magistrates, who first gave notice of the meeting; and it was a breach of the law in the other magistrates to attempt to wrest this jurisdiction out of their hands; for what the law says shall not be done it becomes illegal to do, and is therefore the subject-matter of an indictment, without the addition of any corrupt motives. And, though the want of corruption may be an answer to an application for an information, which is made to the extraordinary jurisdiction of the Court, yet it is no answer to an indictment, where the judges are bound by the strict rule of law.

The justice shall not be liable to be punished both ways, that is, both criminally and civilly; and, before the Court will grant an information, they will require the party to relinquish his civil action, if any such is commenced. And, even in the case of an indictment, and though the indictment be actually found, yet the Attorney-General (on application made to him) will grant a *noli prosequi* upon such indictment, if it appear to him that the prosecutor is determined to carry on a civil action at the same time. (*R. v. Fielding*, 2 *Burr.* 719.)

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Not to be punished both ways.

*Practice, etc., as to applying for an Information.*]—The practical rules as to the obtaining a criminal information against a party in general will here apply. (See 1 *Chit. C. L.* 849 to 873; *Tidd's Practice*, 9th edit.) In addition thereto, the following rules should be noticed:—

Practice as to applying for a criminal information against a justice.

The Court will not grant an information at the end of the term so late that cause cannot be shewn before the next, for any misconduct alleged to have taken place before its commencement, though they will do so, if the circumstances complained of arose within it. (*R. v. Smith*, 7 *T. R.* 80; *R. v. Marshall*, 13 *East*, 322.)

Time of motion.

And after the expiration of two terms, no motion of this kind will be entertained at all. (*R. v. Harries*, 13 *East*, 270; *Lofft*, 273, 394; *Hand's Prac.* 6.) But this rule only extends to motions of this kind against magistrates or other public officers. (*R. v. Jollie*, 4 *B. & Adol.* 867.)

Where facts, tending to criminate a magistrate, took place twelve months before the application to the Court, they refused to grant a criminal information, although the prosecutor, in order to excuse the delay, stated that the facts had not come to his knowledge till a very short time before the application was made. (*R. v. Bishop*, 5 *B. & Adol.* 612. And see *R. v. Hartley*, 4 *B. & Adol.* 869, n. *Sed vide R. v. Jollie*, *Id.* 867.)

Where the application is made by a party who alleges himself to have been illegally convicted, or otherwise aggrieved by the justice in the way of his official duties, he will be required to make an affidavit, exculpating himself from the charge originally made against him, and which formed the ground of the adverse proceedings. (*R. v. Webster*, 3 *T. R.* 388; 2 *Hawk. c.* 36, s. 9.)

Exculpatory affidavit.

In every criminal information against a justice of the peace for any act done by him in his official capacity, it is necessary, previous to the application for it, to give a notice of the intended motion and of the grounds for it, and this although other misconduct than misconduct in his ministerial capacity is charged against him. (*R. v. Heming*, 5 *B. & Adol.* 666; 2 *Nev. & M.* 477, *S. C.*; 2 *Barnard*, 284; *Hand's Prac.* 2.) It must be served six days prior to the motion: if the notice name a day for the motion which is less than six days distant, such defect is

Notice of motion.

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Justices to  
Act.*

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not aided by the party forbearing to move within six days. (*Ex parte Fentiman*, 4 Nev. & M. 126; 2 Adol. & Ell. 127, S. C.) The notice should state the ground of complaint, and should be served personally, or left at his usual place of abode. (*Jones d. Griffiths v. Marsh*, 4 T. R. 465; *Hand's Prac.* 3.) And this must be done in sufficient time before the motion, to enable him, if he think proper, in the first instance to oppose the motion for the rule *nisi*; but he seldom avails himself of this opportunity, as he can more effectually make his defence when the affidavit containing all the circumstances of the charge is filed, on showing cause why the rule should not be made absolute. (*Hand's Prac.* 3.) An affidavit of the service must then be made, in order to induce the Court to grant the rule *nisi*, in case no opposition is made on the part of the defendant. (*Ib.* See form of affidavit, *Hand's Prac.* 87.)

Costs on.

When the Court, on the application to make the rule absolute, think that there is no ground for permitting an information to be filed, and the only question is, how the costs already incurred shall be defrayed, they will consider the circumstance of the party accused being a magistrate, and acting in the discharge of his official duties, as very material to their decision. And, therefore, where the Court was moved to grant a criminal information against magistrates and several others, for a misdemeanour relating to the conviction of a poacher, they discharged the rule, with costs to be paid to the magistrates, and left the others to defray their own expenses. (*R. v. Palmer*, 2 Burr. 1162; *Bac. Abr.*, "Informations" (B), in notis: 1 Chit. C. L. 876.) And in general, whenever the charge is altogether groundless, costs will be directed to be paid to the magistrate; and that not only by the prosecutor himself, but by his attorney who joined in the affidavit for the rule, if his motives be proved to be malicious. (*R. v. Fielding*, 2 Burr. 654.) But, where the justice, though cleared from all oppressive intentions, appears to have acted irregularly, the Court, while they will discharge the rule, will leave him to pay his costs, as if he were a common defendant. (*R. v. Fielding*, 2 Burr. 722; 1 Chit. C. L. 876.)

When a justice is  
convicted on an  
information, he  
must appear in  
person.

*R. v. Harwood* (2 Stra. 1088; *R. v. Hann*, 3 Burr. 1716, 1786.) The defendant, being a justice of the peace, was convicted on an information, for a conviction by him made of an alehouse keeper, who was never summoned or heard. It was moved, as of course, to dispense with his appearance. This was opposed, unless there was some reason given, or affidavit made. And upon debate, the Court resolved it was not of course; and the defendant afterwards appeared in person.

## IX. Of Compelling Justices to Act.

Compelling jus-  
tices to act.

Formerly, the only mode of compelling justices to discharge their duty was by applying to the Court of Queen's Bench for a writ of *mandamus* against them. (See tit. "*Mandamus*," *post*, as to the nature of this writ.) Now, however, by the 11 & 12 Vict. c. 44, s. 5, where justices refuse to do any act relating to the duties of their office, the party requiring the act to be done may apply to the Queen's Bench for a rule, calling upon the justices and the party to be affected by the act to show cause why it should not be done; and if, after due service of the rule, good cause is not shown against it, the Court may make it absolute, with or without costs; and the justices, upon being served with the rule absolute, must obey it, and do the act required; but no action or proceeding is to be commenced or prosecuted against them for having obeyed the rule.

The Court will inquire into the validity of an order of justices before compelling them under this section to issue a distress warrant to enforce

it, and will refuse a rule where the order appears to be invalid. (*Reg. v. Colling*, 17 Q. B. 816; 21 L. J., M. C. 73, S. C.; *Reg. v. Deverell*, 3 E. & B. 373; 23 L. J., M. C. 121, S. C.; *Reg. v. Tyrrell*, 15 Q. B. 249; *Reg. v. Wodehouse*, Ib. 1037. And see *R. v. Justices of Buckinghamshire*, 2 D. & R. 689; 1 B. & C. 485, S. C.; *R. v. Broderip*, 7 D. & R. 861; 5 B. & C. 239, S. C.)

There must be a refusal on the part of the justice to act in order to induce the Court to interfere. Thus, where a magistrate, upon a complaint regularly heard before him, gave his opinion against the complainant, but, at his request, refused to adjudicate, for the purpose of enabling him to take the opinion of the Court, the defendant objecting, and wishing the magistrate to adjudicate, the Court held that there had been no refusal to adjudicate so as to entitle the complainant to a rule. (*Reg. v. Paynter*, 7 El. & Bl. 328; 26 L. J., M. C. 102, S. C.; *Reg. v. Dayman*, Ib. 128; 7 El. & Bl. 672, S. C.; *Reg. v. Brown*, 7 El. & Bl. 757; 26 L. J., M. C. 183, S. C.)

Nor will the Court interfere where the justices have acted or decided on a question of fact within their jurisdiction (*Reg. v. Dunn*, 7 El. & Bl. 220; 26 L. J., M. C. 74, S. C.), although the decision they have come to may be erroneous. (*Reg. v. Blanchard*, 15 L. J., M. C. 111; *Reg. v. Frieston*, 5 B. & Ad. 597; *Reg. v. Kesteven*, 3 Q. B. 810; *Ex parte Clee*, 1 L. & M. 31; 21 L. J., M. C. 112, S. C.)

But, where the mistake in law results in declining jurisdiction, the justices will be compelled to enter on the inquiry, though a decision upon a question of fact over which they have jurisdiction will not be reviewed. (*R. v. Goodrich*, 19 L. J., N. S., M. C. 240.) Nor, formerly, would a *mandamus* be issued to compel justices in quarter sessions to review their decision in an appeal, as not warranted by the evidence (*R. v. Justices of Worcestershire*, 1 Chit. 649); or to compel them to give their reasons for their judgments, or to make special entries thereof on their records (*R. v. Justices of Devon*, 1 Chit. 34); or to grant a special case (*Peat's case*, 6 Mod. 249); but, where a case had been granted, a *mandamus* was issued to the sessions to compel them to state it. (*R. v. Justices of Pembrokehire*, 2 B. & Ad. 391.)

The section does not give the Court power where a *mandamus* could not be issued (*Reg. v. Justices of Bristol*, 3 El. & Bl. 479, n.); and, therefore, it is still useful to consider the former cases relating to the issuing of a *mandamus*.

Where justices heard one side in an appeal at sessions, and altogether refused to hear the other, it was said that it was the same as if the case had not been heard at all, and that a *mandamus* should issue to them to hear it. (*R. v. Justices of Carnarvon*, 4 B. & Ad. 86.) Yet, if this decision be matter of fact as to the insufficiency of the grounds stated, either of appeal or of removal on a preliminary objection, and they decide against the party being heard in consequence, the Court of Queen's Bench will not interfere. (*Reg. v. Justices of Kesteven*, 3 Q. B. 810; overruling *Reg. v. Justices of Carnarvonshire*, 2 Q. B. 325, and *Reg. v. Justices of West Riding of Yorkshire*, Ib. 331.)

When their decision was made subject to a case for the Queen's Bench, which they omitted to settle upon a disagreement on it by counsel, a *mandamus* was granted to require them to enter, continue, and hear the appeal, where a *certiorari* had been sued out within six months to bring up the case, on the ground that their decision was conditional and not an absolute order. (*R. v. Justices of Suffolk*, 1 D. P. C. 163.) *Aliter*, if six months have elapsed since their decision and no *certiorari* sued out; for their decision has become an absolute order. (*R. v. Justices of Staffordshire*, 1 D. P. C. 484.)

Where they dismissed an appeal, with the option of a case or of an application for a *mandamus*, the latter was granted when four months

When one side  
not heard.

When a case is  
granted.

9. *Compelling Justices to Act.* had elapsed and no case had been stated. (*Reg. v. Justices of Cheshire, 2 New Sess. C. 420; R. v. Justices of West Riding of Yorkshire, 11 L. J., M. C. 84; In re Chorlton Township.*) But, where a case was granted on the application of the appellant, when the appeal had been dismissed for want of due notice of trial, which case he abandoned and did not bring up, the Court refused to grant a *mandamus* to enter the same and hear it. (*R. v. Justices of West Riding of Yorkshire, 1 Ad. & Ell. 606.*)

Two magistrates having at the request of a landlord, under the 11 Geo. 2, c. 19, s. 16, proceeded to view a dwelling-house, deserted and unoccupied, and, at the second view, having perceived the tenant looking out of the window (when, however, he did not pay the rent in arrear), refused to put the landlord into possession, and it was held, that a *mandamus* would not lie to the justices to compel them to deliver possession. (*Ex parte Fulder, 8 Dowl. 535.*)

And a *mandamus* to justices, under the statute relating to forcible entry, 5 Ric. 2, sess. 1, c. 1, was refused, there being no instance in which the writ has gone under such circumstances. (*Ex parte Davy, 6 Jur. 949.*)

Where a local Act of Parliament declared that it should be lawful for justices to issue their warrant to levy a rate imposed by certain commissioners under that Act, upon a neglect or refusal to pay the rate, but did not contain any language directly making it compulsory on them to issue, the Court refused to compel them by *mandamus* to issue a warrant in the first instance without any summons. (*R. v. Justices of Stafford, 1 H. & W. 328.*)

A *mandamus* was held not to lie to compel a magistrate to enforce a conviction for the plaintiff, where he had returned, that the defendant was convicted of the penalty before him, but that the conviction was invalid in law, and there was not an offence for which the penalty was payable, or could legally be levied. (*R. v. Robinson, 2 Smith, 274.*)

So, a *mandamus* to the justices in sessions, to allow an item of charge in the coroner's account, was refused, because the justices were of opinion, under the circumstances, that there was no ground to suppose that the deceased had died any other than a natural, though a sudden, death; and therefore that the inquisition had not been duly taken: and the Court of King's Bench saw no reason for interfering with that judgment. (*R. v. Kent (Justices), 11 East, 229.*)

So, where the inhabitants of a town, not within a hundred, had incurred costs in defending actions brought on the 57 Geo. 3, c. 13, s. 38, for damages done by riotous assemblies, a *mandamus* was refused to compel two justices of the town to make and levy a rate for paying the costs. (*R. v. King's Lynn (Justices), 4 D. & R. 778; 3 B. & C. 147, S. C.*)

And, where the weavers presented a petition to the justices at sessions, praying them to limit a rate of wages, according to the provisions of the 5 Eliz. c. 4, s. 15, and the 1 Jac. 1, c. 6, s. 3, and the justices heard the petition, and counsel in support of it, and, after making inquiry and examining witnesses upon the subject, determined that they could not make any rate more beneficial to the weavers, the Court refused a *mandamus* to the justices to hear and determine, although they did not examine the witnesses tendered by the petitioners, or any witnesses upon oath or in open Court. (*R. v. Cumberland, JJ., 1 M. & Sel. 190.*)

But, where justices had refused to hear an application of journey-men millers praying them to make a rate of wages, on the ground that they had no jurisdiction over any other wages than those of servants in husbandry, the Court of Queen's Bench granted a *mandamus* to the justices to hear the application. (*R. v. Justices of Kent, 14 East, 395.*)

It is discretionary in justices whom they will license to keep a public-house, and a *mandamus* was held not to lie to compel the justices to license

a person; and on a conviction for selling ale without licence, the want of such licence only can come in question, and not the reason why it was denied. (*Giles's case*, 2 Str. 881.) Therefore, even where affidavits were offered to be produced, of the justices having declared that they would grant no licences to any of the inhabitants who signed a petition to Parliament for erecting a workhouse there, and that the person on whose behalf the motion was made had been a victualler in the town for above thirty-five years, a *mandamus* was refused. (*Anon.*, 1 Barnard, 402; *R. v. Young*, 1 Burr. 556.)

And a *mandamus* was refused to command justices to hear an application for an ale licence which they had refused, though it was suggested that their refusal proceeded from a mistaken view of their jurisdiction. *Et per Curiam*—"It being conceded that the magistrates have heard and determined upon this application for a licence, which is a matter peculiarly for their consideration, we cannot grant a *mandamus* to them to re-hear what they have already determined." (*R. v. Licensing Justices of Ward of Farrington Without*, 2 D. & R. Mag. Ca. 365; 4 D. & R. 735, S. C.; and see a still later case, *R. v. Surrey (Justices)*, *Id.* 435; 5 D. & R. 308, S. C.)

And, when an ale licence had been refused by justices under a mistake of the law, a *mandamus* to them to re-hear the application after the first twenty days of September was refused. (*R. v. Justices of Surrey*, 5 D. & R. 308.)

A conviction under the stat. 8 Hen. 6, c. 9, set forth a complaint made to two justices of an entry into premises of the complainant, an unlawful ejectment and a forcible detainer by the defendant, that the justices on personal view found the defendant forcibly detaining according to the complaint, and that he was, therefore, convicted by them of forcible detainer by their own view. The defendant gave a written notice to the justices after the conviction, denying the force and complainant's possession; and, on an inquisition afterwards had, the jury found a seisin in fee by the complainant, and an unlawful entry, ejectment, and forcible detainer. The justices indorsed upon the inquisition a memorandum of having re-seized the premises, and put the complainant into possession. The conviction, inquisition, and memorandum having been returned by the justices to a *certiorari*, requiring a return of the conviction and inquisition, and all things touching the same, the Court refused to grant a *mandamus* to amend the return by returning the information, and by returning on the face of the conviction the evidence given touching the entry, and the facts touching the conduct of the defendant on the view, it not being suggested in affidavit that any evidence was received by the magistrates on the view. The Court gave no opinion as to the validity of the conviction. (*R. v. Wilson*, 1 Ad. & E. 627; 5 N. & M. 164, S. C.)

The allowance of a poor-rate by a magistrate is purely a ministerial act; and, if it be good on the face of it, they cannot inquire into its validity. Where a poor-rate had been made by the two overseers of a parish alone, there being also two churchwardens who had not been sworn in, and the magistrates had refused to allow it, as not being made by the majority of the parish officers, a *mandamus* to the justices to allow the rate was granted. Such rule was held a rule absolute in the first instance. (*R. v. Godolphin and another*, 13 L. J., N. S., M. C. 57.)

So, where a party claiming an exemption from a highway-rate allowed the time limited for appeal to expire, the justices were compelled by rule to issue a distress-warrant for levying the amount of the rate. (*Bletchington v. Peyton*, 6 D. & L. 288; 18 L. J., M. C. 222, *nom. Reg. v. Justices of Oxfordshire*. And see *Ex parte May*, 31 L. J., M. C. 161.)

But it was held not to lie to compel justices to order prisoners, committed to gaol for trial, any other food than bread and water, where such prisoners were able to work, and had the means of employment offered them,

10. *Actions against.*

by which they might earn their support, but who refused to work. (*R. v. North Riding of Yorkshire*, 3 *D. & R.* 510; 2 *B. & C.* 286, *S. C.*)

As the 13 Geo. 1, c. 23, s. 5, for settling "disputes between clothiers or makers of woollen goods, and weavers, or persons employed in such manufactures," did not relate to demands for work done for the clothiers, in teasing, scribbling, carding, and stubbing the wool, the Court refused a *mandamus* to two justices to hear and examine such demands. (*R. v. Heywood*, 1 *M. & Sel.* 624.)

And the Court refused to grant a *mandamus* to the sessions to hear an original complaint touching the conduct of the trustees in the erection of a gate, after a lapse of twenty-six years from the time when it was erected; leaving the party to proceed by indictment for the nuisance, or by an action of trespass if his passage was obstructed. (*R. v. Cambridge-shire (Justices)*, 1 *D. & R.* 325.)

It seems it will not lie to inspect the books of the quarter sessions, upon the application of a private individual. (*R. v. Chester (Sheriffs)*, 1 *Chit.* 476. But see *Herbert v. Ashburner*, 1 *Wils.* 297.) See *ante*, tit. "*Inspection.*"

As to when a *mandamus* will lie to compel a magistrate to produce depositions taken before him, see tit. "*Sessions (Petty)*," Vol. V.

Practice as to  
*mandamus.*

If justices have refused to hear an appeal, application for a *mandamus* must be made within the term next after the refusal, in the absence of special circumstances for delay. (*R. v. Recorder of Richmond*, 27 *L. J., M. C.* 197.)

On motion against justices under the 11 & 12 Vict. c. 44, s. 5, the general rule is that the unsuccessful party must pay the costs. (*Reg. v. Ingham*, 17 *Q. B.* 544; 21 *L. J., M. C.* 125, *S. C.*)

Service of a rule *nisi* for a *mandamus* to the sessions, to hear an appeal against the determination of the petty sessions, need not be upon the clerk of the peace; it is sufficient if it be served on the justices whose decision is complained against. (*R. v. Tucker*, 5 *D. & R.* 434; 3 *B. & C.* 544, *S. C.*)

Leave may be given to withdraw a return to a *mandamus* by consent. (*R. v. Barker*, 3 *Burr.* 1379.)

The Court will not direct in what manner justices shall make their return to a *mandamus*; but, if the return made to it be insufficient to raise the question intended to be agitated, the Court will, at the instance of the party interested, make a rule giving the justices liberty to amend in the manner required, if they wish so to do. (*R. v. Marriott*, 1 *D. & R.* 166.)

A return to a *mandamus* to justices to hear and determine a complaint before them, "that it was determined," was allowed. (*R. v. Richardson*, 1 *Wils.* 21.)

As to a false return by justices, see *ante*, 148.

## X. Actions against.

And herein—

1. *When an Action lies*, p. 155.
2. *Notice of*, p. 162.
3. *Limitation of*, p. 168.
4. *Venue*, p. 169.
5. *Plea of General Issue*, p. 169.
6. *Tender of Amends and Payment of Money into Court*, p. 170.

7. *Damages*, p. 171.8. *Costs*, p. 171.9. *Defect in Plaintiff's Proofs*, p. 172.10. *Actions against.*

## 1. WHEN AN ACTION LIES.

It may be laid down, as a general rule, that, if a justice of the peace in or out of sessions *has jurisdiction* over the subject-matter laid before him, and acts *judicially*, he is not liable to an action for any act done under it, however *erroneous* the conclusion at which he arrives may be. (2 *Hawk.* c. 13, s. 20; 6 *How. St. Tr.* 1096; 20 *Ib.* 203; *Ackerley v. Parkinson*, 3 *M. & S.* 425; *Bassett v. Godschall*, 3 *Wils.* 121; *Griffiths v. Harris*, 2 *M. & W.* 335; *Wilkins v. Hemsworth*, 3 *N. & P.* 55; *Garnett v. Ferrand*, 6 *B. & C.* 611. And see *Mills v. Collett*, 6 *Bing.* 85; 3 *M. & P.* 242, *S. C.*; *Dicas v. Lord Brougham*, 6 *C. & P.* 249; 1 *M. & Rob.* 309, *S. C.*; *Reg. v. Bolton*, 1 *Q. B.* 66.)

When he acts judicially.

The broad rule is that, unless the duty of the magistrate is simply and purely ministerial, he cannot be made liable to an action for a mistake in doing or omitting to do anything in execution of that duty, unless he can be fixed with malice. Thus, under s. 23 of the 11 & 12 Vict. c. 42, authority is given to magistrates to admit to bail at their discretion persons accused of certain specific misdemeanours; and, when a magistrate had refused to take security of bail offered in a charge for one of those misdemeanours, viz. for assaulting a peace officer in the execution of his duty, the declaration in an action against him for such refusal alleged malice; but the jury found that he did not act maliciously; and it was held that the action would not lie against the magistrate for so refusing without proof of express malice, although the sureties tendered were found by the jury to have been sufficient. (*Linford v. Fitzroy*, 18 *L. J., M. C.* 108.)

Liability of justices where a discretion is required to be exercised.

And by sect. 4 of the 11 & 12 Vict. c. 44, it is enacted, "That in all cases where a discretionary power shall be given to a justice of the peace by any Act or Acts of Parliament, no action shall be brought against such justice for or by reason of the manner in which he shall have exercised his discretion in the execution of any such power."

By the same section it is enacted that, where any poor-rate shall be made, allowed, and published, and a warrant of distress shall issue against any person named and rated therein, no action shall be brought against such justice or justices who shall have granted such warrant, by reason of any irregularity or defect in the said rate, or by reason of such person not being liable to be rated therein.

In cases of warrants issued for payment of poor-rates.

And sect. 6 enacts, that in all cases where a warrant of distress or warrant of commitment shall be granted by a justice of the peace upon any conviction or order which either before or after the granting of such warrant shall have been or shall be confirmed on appeal, no action shall be brought against such justice who so granted such warrant for anything which may have been done under the same, by reason of any defect in such conviction or order.

For warrants upon convictions or orders confirmed on appeal

The third section also enacts that, where a conviction or order shall be made by one or more justice or justices of the peace, and a warrant of distress or of commitment shall be granted thereon by some other justice of the peace, *bonâ fide* and without collusion, no action shall be brought against the justice who so granted such warrant, by reason of any defect in such conviction or order, or for any want of jurisdiction in the justice or justices who made the same; but the action, if any, shall be brought against the justice or justices who made such conviction or order.

For warrants upon convictions or orders made by other justices.



10. *Actions against.*

For acts within  
their jurisdiction.

By sect. 1, it is enacted that every action hereafter to be brought against any justice of the peace for any act done by him in the execution of his duty as such justice with respect to any matter within his jurisdiction as such justice, shall be an action on the case as for a tort, and in the declaration it shall be expressly alleged that such act was done maliciously, and without reasonable and probable cause; and if, at the trial of any such action, upon the general issue being pleaded, the plaintiff shall fail to prove such allegation, he shall be nonsuit, or a verdict shall be given for the defendant.

For acts without  
any, or beyond  
their, jurisdic-  
tion.

By sect. 2, it is enacted that for any act done by a justice of the peace in a matter of which by law he has not jurisdiction, or in which he shall have exceeded his jurisdiction, any person injured thereby or by any act done under any conviction or order made or warrant issued by such justice in any such matter, may maintain an action against such justice in the same form and in the same case as he might have done before the passing of this Act, without making any allegation in his declaration that the act complained of was done maliciously and without reasonable and probable cause. Provided nevertheless that no such action shall be brought for anything done under such conviction or order until after such conviction shall have been quashed either upon appeal or upon application to her Majesty's Court of Queen's Bench. Nor shall any such action be brought for anything done under such warrant which shall have been issued by such justice to procure the appearance of such party, and which shall have been followed by a conviction or order in the same matter until after such conviction or order shall have been so quashed as aforesaid. And, if such last-mentioned warrant shall not have been followed by any such conviction or order, or if it be a warrant upon an information for an alleged indictable offence, nevertheless, if a summons were issued previously to such warrant, and such summons were served upon such person either personally or by leaving the same for him with some person at his last and most usual place of abode, and he did not appear according to the exigency of such summons, in such case no such action shall be maintained against such justice for anything done under such warrant.

When the cause of action against a justice is an act done in the execution of his duty as such, in a matter within his jurisdiction, as distinguished from an act done by him in a matter in which he shall have exceeded his jurisdiction, such as are specified in the last two sections, it is necessary so to read these sections together as to put a limit on the second section, and prevent them conflicting. For, where an information was laid before a justice in a matter within his jurisdiction, and on the hearing he awarded a penalty and costs, with a power of levying them by distress, and so acted within his jurisdiction, but exceeded it by adjudging the person charged to be put in the stocks unless the penalty and costs were sooner paid, this alternative in respect of the costs was unauthorized though warranted as to the penalty, and the conviction quashed on this ground. The justice had issued a warrant of distress under which the plaintiff's goods were seized. But nothing had been done in respect of the stocks. It was held that trespass for the distress would not lie under the second section, as the distress, the cause of action, was not an act done by the justice in which he had exceeded his jurisdiction, but should have been made the cause of action under s. 1. Had the act complained of been the putting the plaintiff in the stocks, it would have been for an act done in which he had exceeded his jurisdiction, and for which trespass under s. 2 might have been brought. (*Barton v. Bricknell*, 20 L. J., M. C. 1.)

In a case where there had been a conviction by a justice, and default made by the person convicted, and a summons for such default served on him was followed by a warrant of commitment, the conviction being quashed, it was held that the summons and warrant referred to by this

enactment, sect. 2, must be a summons and warrant before conviction, and do not apply to such a summons and warrant after conviction as in this case issued for levying the penalties; and that this warrant, to arrest and bring a party before a justice for neglecting to pay, was not a warrant granted by the justice to procure the appearance of the party with a view to a future conviction or order, or one in respect of which this section gave indemnity to the justice for what he did thereunder, and that an action of trespass would lie therefore under sect. 2 for false imprisonment, as for an act not done within his jurisdiction. (*Bessell v. Wilson*, 22 L. J., M. C. 95.)

Where an arrest by a railway official of a passenger for an offence against the provisions of a railway Act was made without any warrant or other authority, pursuant to power given by the same Act so to arrest, and to convey the person arrested with all convenient despatch before some justice of the peace who was thereby required to proceed immediately to conviction or acquittal of the offender, it was held that under s. 16 of the 11 & 12 Vict. c. 43, the justice before whom such offender was brought might in his discretion, if he thought fit, commit the offender to the house of correction during an adjournment of the hearing; that the authority of this section under which the justice so acted was sufficient for his protection; and that, as the imprisonment under the commitment was lawful, a verdict for defendant must be entered in an action against such justice for unlawful imprisonment. (*Gelan v. Hall*, 27 L. J., M. C. 78.)

If a justice has no jurisdiction over a matter, he would be liable to an action for any act done in pursuance of his orders or directions in such matter, though he acted judicially. (*Terry v. Huntington*, *Hardress*, 483; *Perkin v. Proctor*, 2 *Wilson*, 384; *Sadgrave v. Kirby*, 6 *Term Repts.* 483; *West v. Small*, 3 *M. & W.* 411.)

For any act in excess of jurisdiction the magistrate will be liable to an action. (*Crepps v. Durden*, 2 *Cowp.* 640; *Davis v. Russell*, 5 *Bing.* 354; *Davis v. Copper*, 10 *B. & C.* 23.)

It is an unexceptionable rule that a conviction, so long as it remains in force, is conclusive evidence of the facts therein stated; and now by statute, until it has been reversed, no action will lie for any alleged want or excess of jurisdiction. So, where a farmer's sheep were seized under distress warrant on a conviction for not performing statute duty, in an action for trespass by the farmer, the conviction was given in evidence, and, being then unreversed and good on the face of it, the plaintiff was nonsuited, which the Court refused to set aside on the ground that the conviction was a sufficient answer to the action. (*Fawcett v. Fowles*, 7 *B. & C.* 394; and see tit. "*Conviction*," Vol. I.)

As by law all convictions and orders must first be quashed, before action brought for any act done by a justice for want of, or in excess of, jurisdiction under them, the cases in which convictions are liable to be quashed on these grounds will afford instances of when justices are liable to actions for the like reasons.

Sect. 7 enacts that in all cases where by this Act it is enacted that no action shall be brought under particular circumstances, if any such action shall be brought, it shall be lawful for a judge of the Court in which the same shall be brought, upon application of the defendant and upon an affidavit of facts, to set aside the proceedings in such action with or without costs as to him shall seem meet.

By the 20 & 21 Vict. c. 43, s. 9, after decision of the superior Court in relation to any case stated for their opinion under that Act, the justice or justices in relation to whose determination the case has been stated, or any other justice or justices of the peace exercising the same jurisdiction, shall have the same authority to enforce any conviction or order which may have been affirmed, amended, or made by such superior Court as the justice or justices who originally decided the case would

No action lies for acts done under conviction unreversed.

Remedy if action, though prohibited, is brought.

10. *Actions  
against.*

have had to enforce his or their determination if the same had not been appealed against; and no action or proceeding whatsoever shall be commenced or had against the justice or justices for enforcing such conviction or order by reason of any defect in the same respectively.

Where a summons for non-payment of a church-rate was heard, and the parties summoned gave the justices notice that they disputed the validity of the rate so as to oust the justices' summary jurisdiction, but the justices held such dispute not to be *bonâ fide*, and issued a warrant of distress, under which the parties' goods were seized, and an action of replevin was thereupon brought against the churchwardens in the county Court by the person whose goods were so seized, who therein recovered damages and costs, and he also brought an action against the justices, who pleaded specially this action in the county Court, it was held by the Queen's Bench that the judgment in the county Court was a bar to the recovery of damages for the seizure. And it was further held by the majority of that Court that the justices would not be liable unless they had acted without reasonable and probable cause in determining that the plaintiff's assertion was a mere pretence, and that they did not *bonâ fide* dispute the rate. (*Pease v. Chaytor*, 32 L. J., M. C. 121.)

A declaration setting out the circumstances above, and alleging that the order of justices for payment of the rate had been brought up by *certiorari* and quashed before suit, was on demurrer held sufficiently to show that the defendants had acted without jurisdiction, and need not contain an allegation that the defendants acted maliciously, and without reasonable and probable cause. (*Ib.*, L. J., M. C. 121.)

In *Gelan v. Hall*, 27 L. J., M. C. 78, above referred to, a point was raised but not determined, whether an action can be maintained against a justice of the peace for wilfully and maliciously and without reasonable and probable cause convicting a person in a penalty in a matter in which the justice has jurisdiction, and which penalty is paid, but the conviction afterwards quashed on appeal.

After conviction of plaintiff by justices in penalty and costs, or two months' imprisonment, he gave notice of appeal before any conviction was drawn up. Afterwards a conviction and warrant were drawn up, with blanks left for the amount of costs, and so signed by the justices. These blanks were filled in by the justices' clerk at a later time. In an action by plaintiff for false imprisonment it was held that the signing by justices in blank was merely an irregularity and not an excess of jurisdiction, and that the plaintiff was rightly nonsuited under s. 1 of the 11 & 12 Vict. c. 44. (*Bott v. Ackroyd*, 28 L. J., M. C. 207.)

An appeal against a bastardy order to quarter sessions does not, until it is heard, suspend the jurisdiction of a single justice, under the 7 & 8 Vict. c. 101, s. 3, to grant a warrant to enforce payment under such order against appellant, after one month from the making of it. And after the appeal, the order being confirmed subject to a case, and before its decision, such warrant being granted by a justice for enforcing payment, it was held that s. 2 of the 11 & 12 Vict. c. 44, protected the justice from an action of trespass for the arrest under the warrant. (*Kendall v. Wilkinson*, 24 L. J., M. C. 89.)

Three magistrates, acting under the 5 & 6 Will. 4, c. 76, s. 60, committed the crier of the borough of E. to the county gaol, until he should deliver up the bell, which was stated in the conviction and commitment to be the property of the council of the borough. This conviction was afterwards quashed on appeal: but it was held, that the magistrates had jurisdiction to convict; and, there being nothing on the face of the conviction to make it void, that trespass would not lie against them. (*Baylis v. Strickland*, 1 Scott, N. R. 540.)

Seven borough magistrates, including the mayor, assembled to appoint overseers. The mayor drew from his pocket two blank forms, with three seals ready attached, filled them up with the names of two persons of his own political party, handed them to the two magistrates

sitting next to himself, and, on their being signed, immediately despatched them by a constable to be served. As soon as the constable had left the room, the four other magistrates, who had not observed the mayor's proceedings, requested him to nominate two other overseers, and, upon his refusing to put the question, appointed them without his concurrence. The mayor afterwards caused a distress to be levied on plaintiff for refusing to pay a rate made by the overseers appointed by the mayor. Plaintiff sued the mayor in trespass: the jury were directed that they might find for plaintiff if they thought the mayor's appointment of overseers to be fraudulent. The jury having found it not fraudulent:—Held, that the action was not maintainable, the appointment of the overseers being a judicial act, performed without fraud, at a meeting competent, in point of jurisdiction, to perform it, and the act being verified by a sufficient number of signatures to satisfy the statute regulating the mode of appointment. (*Penney v. Slade*, 7 Scott, 285; 5 Bing. N. C. 319; 1 Arn. 539, S. C.)

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By the 11 & 12 Vict. c. 42, s. 21, for reasonable cause the justices may defer the examination of witnesses, and the accused, in cases of indictable offences, may be remanded from time to time, for such time as by such justices in their discretion shall be deemed reasonable, not exceeding eight clear days; and, if the remand be for a time not exceeding three clear days, it shall be lawful for such justices verbally to order the constable, etc., to keep such party accused in his custody, and bring him before justices at the time appointed for continuing such examination.

Where he acts ministerially.

And by sect. 25, if, when all the evidence on the part of the prosecution against the accused party shall have been heard by the justices of the peace present, it shall in the opinion of such justices be sufficient to put the accused party upon his trial for an indictable offence, etc., then such justices shall by their warrant commit him to the common gaol, until he shall be thence delivered by due course of law. But an action would still lie against a magistrate who commits a party for trial without a warrant in writing (*Hutchinson v. Lowndes*, 4 B. & Ad. 118), or without an accusation in cases of felony. (*Morgan v. Hughes*, 2 T. R. 225.) And trespass lies against a magistrate who commits a party, charged with felony, for re-examination beyond the proper time, though without any improper motive. (*Davis v. Capper*, 10 B. & C. 28.) Where a justice, meeting in the street a person who had been taken into custody for drunkenness, said, "Take the man back, I will see him to-morrow," *Patteson, J.*, ruled that he was liable to an action for false imprisonment, that he should rather have declined to hear the charge, or have directed the party to be taken before some other magistrate, but he had no right to remand him for twenty-four hours. (*Edwards v. Ferris*, 7 C. & P. 542.)

But, supposing the facts alleged before the magistrate, if true, would give the justice jurisdiction, his liability to be sued, or his exemption from such liability on the ground of jurisdiction, cannot be affected by the truth or falsehood of those facts, or by the sufficiency or insufficiency of the evidence adduced for the purpose of establishing them. (*Cave v. Mountain*, 1 M. & Gr. 257; 1 Scott, N. R. 132, S. C.) Therefore, an information brought before a magistrate, which charges an offence within his cognizance, is sufficient to give the magistrate jurisdiction, and to protect him from an action for false imprisonment, although the information disclose no legal evidence against the alleged offenders, and even though it purport to be founded on inadmissible hearsay evidence. (*Ib.*; and see *Pike v. Carter*, 10 Moore, 376; 3 Bing. 78, S. C.)

And, if a party make a complaint of another to a magistrate in a matter over which he has a general jurisdiction, who thereupon issues his warrant, by force of which an arrest is made, neither the party complaining nor the magistrate is liable in trespass, and the only remedy

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against.*

for the party aggrieved is in case for malicious prosecution against the party who laid the complaint. But, if the matter were one in which the magistrate had no jurisdiction at all, then the latter is a trespasser. (*West v. Small*, 3 M. & W. 418.)

In *Sir Edward Clere's case* (Cro. Eliz. 130), it was said, "If a man be accused to a justice of the peace, of an offence for which he causeth him to be arrested by his warrant, although the accusation be false, yet he is excusable."

So in *Lowther v. The Earl of Radnor and another* (8 East, 113), which was an action of trespass brought against the defendants for having, as justices, issued a warrant of distress against the goods of the plaintiff, for a cause which, upon the face of the order, appeared to be within their jurisdiction. Upon the trial, in order to prove the justices to have been trespassers, other facts than those stated before them when they made their order, were proved. A verdict was found for the plaintiff, subject to the opinion of the Court of King's Bench. And it was held by Lord *Ellenborough*, C.J., that the magistrates could not be affected as trespassers, if the facts stated to them upon oath by the complainant were such whereof they had jurisdiction to inquire, and nothing appeared in answer to contradict the first statement. And *Lawrence*, J., said, if the magistrates made an order against the evidence laid before them, the party injured would have another sort of remedy against them. But here it appears that a certain complaint was made to them on oath, which, as it appears on the face of the order, is valid in law; and of this the plaintiff had due notice. If, then, he would complain of what was done upon it, he ought to have shown that the facts on which he now relies were proved before the magistrates. But he cannot make them trespassers by showing that the real facts of the case will not support the complaint, unless such facts were proved before them at the time.

Where a justice  
acts as a judge of  
record.

In some cases a justice acts as a judge of record, as in case of riot, giving possession of deserted premises, etc.; and then the record is a conclusive answer to any action that may be brought. Thus, where, under the statute 11 Geo. 2, c. 19, two magistrates had delivered possession of premises as being deserted, when, in fact, the tenant's wife and family continued there, and the judge of assize awarded restitution with costs, the record was held conclusive evidence for the justices in an action against them. (*Ashcroft v. Bourne*, 3 B. & Ad. 684. And see *Basten v. Curew*; 3 B. & Cres. 649.) For a record cannot be quashed; and the awarding restitution is analogous to reversing the judgment of a Court of record by writ of error, in which case the record of the original judgment remains a justification of all which was done under it.

Where conviction  
good, but  
commitment or  
distress bad.

Though a conviction be good and valid, if the warrant of committal or distress on it be defective, the justice is liable for anything done under it (*Wickes v. Clutterbuck*, 10 Moore, 63; 2 Bing. 483; *Davis v. Copper*, 10 B. & C. 28; 5 Man. & R. 53), unless there be a provision to that effect in the statute on which it is framed. So, he would be liable to an action if the warrant of commitment substantially vary from the conviction, so that the offence stated in the former, and that described in the latter, are, in law, wholly different in their nature; for in such case, the commitment has no conviction to support it. (*Rogers v. Jones*, 3 B. & C. 409; 5 D. & R. 268, S. C.) The commitment must, as well as the conviction, show that the magistrate has acted within the powers given him, in order that the gaoler or officer may justify under it. As a mere irregularity in point of form does not, however, make void a conviction, so neither does, at common law, a variance not in matter of substance vitiate a commitment. (*Massey v. Johnson*, 12 East, 67.) An order made under the 11 Geo. 2, c. 19, s. 4, for payment of double value of goods fraudulently removed, being valid on the face of it, the warrant of commitment was holden sufficient to justify the magistrate in trespass,

because it referred to the order, though it did not show the facts necessary to give jurisdiction. (*Coster v. Wilson*, 3 M. & W. 411.) A warrant of commitment on a conviction must recite a conviction for an offence over which the committing magistrate had jurisdiction, and the Court will not presume a conviction to be good which, according to the recital, shows a want of jurisdiction. (*R. v. King*, 13 L. J., M. C. 43.)

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If a conviction were quashed, the justice who ordered any act to be done under it would have been liable at common law, just the same as if the conviction had never been made. The common law in respect of the measure of his liability, however, has been altered by the 11 & 12 Vict. c. 44, s. 13, noticed *post*, 171, when treating of the damages recoverable in such a case.

Where conviction quashed.

If a magistrate commit a person to prison in a case in which he has no jurisdiction, he is liable for all the circumstances that usually attend the execution of a warrant of commitment, such as the party being handcuffed, having his hair cut short at the prison, and his being put in a bath there; but not for any violence or excess of the officers. (*Mason v. Barker*, 1 Car. & Kir. 100.)

Damages recoverable.

In the same case it was held that, where a party is committed for non-payment of a penalty in a case where the magistrate has no jurisdiction, and after a part payment of the penalty he is discharged, the jury may give that amount as damages against the magistrate.

A party may sue a magistrate in an action for money had and received, to recover back a fee improperly taken by the magistrate for granting an alehouse licence, though such fee had uniformly been taken for fifty-seven years before. (*Morgan v. Palmer*, 3 B. & C. 733; 4 D. & R. 283, S. C.)

To recover back an improper fee.

The acts of a justice who has not duly qualified himself are not absolutely void; and, therefore, persons seizing goods under a warrant of distress signed by a justice who has not taken the oaths at the general sessions, nor delivered in the certificate required, are not trespassers. (*Proprietors of Margate Pier v. Hannam and others*, 3 B. & Ald. 266; *ante*, 116.) And, from the same case, it should seem that no action of trespass would lie against a magistrate for any act done by him as such, on the ground of his not having duly qualified himself; and that he would be only liable to an action for a penalty, or to an information or indictment.

Action against magistrate not qualified.

A single magistrate is not liable to pay for the expenses incurred in preparing plans for a county gaol, advertised for by the sessions of which he was one. (*Tuck v. Ruggles*, 5 Esp. 237, *Mansfield*, C.J.)

Liability of a justice at sessions for plans of a gaol.

By an Act of Parliament for rebuilding a bridge, justices of peace were empowered to contract for its erection, and the contractor was to give sufficient security for the due performance of his contract to the clerk of the peace, and the justices were empowered to appoint superintending justices at a general quarter sessions. The expenses of re-building the bridge were to be charged on the county rates, and all actions or proceedings at law, to be prosecuted or defended in pursuance of the Act, were to be brought in the name of the clerk of the peace, who should be deemed the plaintiff or defendant, and be re-imbursed all such expenses as he should have paid out of the money arising by virtue of the Act. The superintending justices at the general sessions covenanted by deed with the plaintiff, who undertook to re-build the bridge, that the justices, or the treasurer of the county, should pay him a certain sum by instalments, until the bridge was completed. In an action of covenant brought against such justices by the plaintiff for non-payment of two of the instalments, it was held, that they were not individually liable; and that his remedy was by action against the clerk of the peace. (*Allen v. Waldegrave*, 2 Moore, 621.)

Liability of, on a covenant for expenses of a bridge.

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## 2. NOTICE OF ACTION.

Notice of action.

Service.

Form.

By sect. 9 of the 11 & 12 Vict. c. 44, no action against any justice of the peace, for anything done by him in the execution of his office, shall be commenced until one calendar month at least after a notice in writing of such intended action shall have been delivered to him or left for him at his usual place of abode by the party intending to commence such action, or by his attorney or agent; in which said notice the cause of action, and the Court in which the same is intended to be brought, shall be clearly and explicitly stated; and upon the back thereof shall be indorsed the name and place of abode of the party so intending to sue, and also the name and place of abode or of business of the said attorney or agent, if such notice have been served by such attorney or agent.

Under this section it has been held that a notice of action served before the quashing of a warrant of commitment, in respect of which an action after it was quashed was brought against the justices who granted it, was sufficient, as the quashing of the warrant was no part of the cause of action, and before the warrant was quashed all the requisites of the notice of action enumerated in this section might be and were complied with. Were this not so, the party might be deprived of his remedy, as, by s. 8 of this statute, the action must be commenced within six calendar months next after the act complained of shall have been committed. The commitment is the act complained of, not the quashing of the conviction on the application of the party imprisoned. (*Haylock v. Sparke*, 22 L. J., M. C. 67.)

Uniformity of  
notice of action  
in all cases.

By the 5 & 6 Vict. c. 97, s. 4, reciting "that it is expedient that the law should be uniform with respect to notice of action in all cases where such notice of action is required;" it is enacted, "that from and after the passing of this Act [10th of August, 1842], in all cases where notice of action is required, such notice shall be given one calendar month at least before any action shall be commenced; and such notice of action shall be sufficient, any Act or Acts to the contrary thereof notwithstanding."

Effects of these  
enactments not  
restrained by  
another Act.

*Effect of, not taken away by another Statute.*—Another statute, regulating a notice of action, etc., against a justice, etc., will not, without express words, restrain the operation of the above enactments. The 2 Geo. 3, c. 28 (the Bum-boat Act), which gave additional protection to justices, in cases of actions brought against them for anything done *in pursuance of that Act*, but which did not require notice of action, was held not to deprive them of their right to the notice of action required by the 24 Geo. 2. Therefore, where, in an action against a magistrate acting under the 2 Geo. 3, c. 28, the plaintiff proved service of a notice not perfectly conformable with the requisites of the 24 Geo. 2, and was thereupon nonsuited, it was held that the nonsuit was right. (*Rogers v. Broderip, Esq.*, 4 D. & R., M. C. 123.)

Justices and others acting under the Highway Act, 5 & 6 Will. 4, c. 50, s. 109, are entitled to—1. Twenty-one days' notice of action. 2. Limitation of action to three months. 3. Costs as between attorney and client. But the clause in the latter Act giving twenty-one days' notice of action was held not to repeal the clause in the above statute of 24 Geo. 2, entitling justices to one calendar month's notice. (*Rix v. Borton*, 4 Per. & D. 182; 12 Ad. & Ell. 470, S. C. And see now the 5 & 6 Vict. c. 97, s. 4, *supra*.)

Police magistrates (they being also justices) are entitled to the notices and protections of the 2 & 3 Vict. c. 72, under which they are appointed, in the same manner as other justices. (*Haseldine v. Grove*, 12 L. J., N. S., M. C. 10.)

What Justice  
within the Act.

*What Justice within the Act.*—In the first place, as regards the justice entitled to a notice of action, according to this Act, it should be

observed that the party must be *actually* a justice, and not merely a *deputy justice*; and, in the latter case, he is not entitled to notice. (*Jones v. Williams*, 3 B. & C. 762; 5 D. & R. 654, S. C.) In that case it was made a question, but not decided, whether, since the 27 Hen. 8, c. 24, s. 2, the Crown can delegate to a subject the power of appointing a justice of the peace.

Where a party is not an officer or person within the meaning of the 21 Jac. 1, c. 12, or a similar Act, though he may have supposed he was so, he is not within the protection of the Act; and, therefore, it was held that notice of action for an excessive levy was not necessary to be given to a *sheriff*, under the 43 Geo. 3, c. 99, s. 70, where he had levied arrears of taxes under the 48 Geo. 3, c. 141, no. 5, part 2, when he had no right as sheriff so to act. (*Copland v. Powell*, 8 Moore, 400; 1 Bing. 369, S. C.)

*What Acts entitle a Justice to the Notice.*]—The words “*shall do anything touching or concerning his office*,” “*done by him in the execution of his office*,” “*done in pursuance of this Act*,” in this and other Acts relating to justices and other persons, are to be construed liberally. It has been frequently observed by the Courts that the notice which is directed to be given to justices and other officers, before actions are brought against them, would be of no use to them in cases where they have acted within the *strict line of their duty*, when they need no protection, but was only required for the purpose of protecting them in those cases where they *intended* to act within it, but by *mistake* exceeded it. (See *Kenyon, C.J., Greenway v. Hurd*, 4 T. R. 555; 2 Chit. Stat. 947.)

What acts entitle a justice to notice of action.

The object of the legislature was to protect justices *accidentally* committing an *error* in the discharge of their official duties, and to enable them to tender amends for the wrong done; the statute, therefore, supposes a wrong to have been done, in consequence of some excess or want of authority; for, where the justice has not exceeded his authority, the enactment is useless. Hence, if a magistrate act with some colour of reason and *bonâ fide* believes that he is acting in pursuance of his lawful authority, he is within the protection of the statute, although he acts erroneously or illegally, or exceeds his jurisdiction. The statute applies, unless the act be wholly *aliene* to the jurisdiction, and done *diverso intuitu*. (See *Haseldine v. Grove*, 12 L. J., N. S., M. C. 10; *Wedge v. Berkeley*, 6 Ad. & Ell. 663; *Weller v. Toke*, 9 East, 364; 2 Camp. 199, n., S. C. nom. *Weller v. Tokie*; *Morgan v. Palmer*, 2 B. & C. 734; 4 D. & R. 283, S. C.; *Cook v. Leonard*, 6 B. & C. 351; 9 D. & R. 339, S. C.; *Beechey v. Sides*, 9 B. & C. 809.)

But a justice is not entitled to the protection of notice merely because he believed, *bonâ fide*, that he was acting in pursuance of the statute; there must be reasonable ground for the belief; if, indeed, he acted under a reasonable, though mistaken, persuasion, from appearances, that the facts were such as made his proceeding justifiable by the statute, he is entitled to protection, though the real facts were such that the statute clearly affords no justification. (*Cann v. Clipperton*, 10 Ad. & Ell. 582; and see *Rudd v. Scott*, 2 Scott, N. R., 631; *Lidster v. Borrow*, 9 Ad. & Ell. 654; *Norris v. Smith*, 10 Ad. & Ell. 188.)

Whether he acts with such colour of reason and *bonâ fide* are questions for a jury. (*Haseldine v. Grove*, and *Wedge v. Berkeley*, *supra*.)

A magistrate, sued for detaining goods on a suspicion of felony, is entitled to notice of action if he proceeded under a *bonâ fide* belief that he was executing his duty, although it be proved that he had no reasonable ground of *suspicion*, and, therefore, had no defence on the merits. And, if the plaintiff seeks to maintain his action without having given notice, it lies on him to cause the question of *bona fides* to be put to the jury. (*Wedge v. Berkeley*, *Id.*)

Where a magistrate acted upon a subject-matter of complaint over which he had authority, but which arose out of his jurisdiction, he was



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held entitled to notice. (*Prestige v. Woodman*, 2 D. & R. 43; 1 B. & C. 12, S. C.)

Where one magistrate committed the mother of a bastard to custody for not affiliating the child, though the jurisdiction was given only to two, yet it was held he was entitled to notice of action. (*Weller v. Toke*, 9 East, 364.)

Where the subject-matter is within the jurisdiction of the magistrate, it will be presumed that he acted as such; and, therefore, the lord of the manor, who was also a justice of the peace, was held entitled to a month's notice of action, for taking away a gun in the house of an unqualified person, it being presumed that he acted as a justice, and not merely as lord of the manor. (*Briggs v. Sir F. Evelyn*, 2 H. Bla. 114.)

A party making a distress for two causes, as to one of which he is justified and entitled to the notice of action, is, nevertheless, liable in trespass as to the other. (*Lamont v. Southall*, 5 M. & W. 416.)

When no notice  
necessary.

On the other hand, where there is *no colour whatever* for supposing that the act done is authorized, then notice of action is not necessary; for, where an Act says that, in the case of an action brought against any person for anything done *in pursuance or in execution of the Act*, the defendant shall be entitled to certain privileges, the meaning is, that the act done must be of that nature and description, that the party doing it may reasonably have supposed that the Act gave him authority to do it. (*Per Bayley, J.*, in *Cook v. Leonard*, 6 B. & C. 355-6; 9 D. & R. 342. And see *Cann v. Clipperton*; *Lidster v. Borrow*; *Rudd v. Scott*, ante, 163.)

The 5 & 6 Will. 4, c. 59, for the prevention of cruelty to animals, authorized (s. 9) any constable or the owner of the animal upon view or information to apprehend the offender. But, where a person who had ill-treated a horse was apprehended by one who was neither the owner of the horse nor a peace officer, the person so apprehending was held not to be entitled to the notice of action which the statute required to be given to persons sued for anything done in pursuance of it. (*Hopkins v. Crowe*, 4 Ad. & El. 774. See tit. "*Animals*," Vol. I.)

A magistrate is not entitled to notice of action for a trespass committed by him, where, from the circumstances, the jury think he was not acting *bonâ fide* under an impression that what he did was within the scope of his duty as a magistrate. (*James v. Saunders*, 4 M. & Scott, 316; 10 Bing. 429.) And, therefore, in a case where a disturbance took place in C. upon the liberation of a prisoner, and defendant, a magistrate, seized plaintiff because he was going towards the prison, and the plaintiff was not concerned in the disturbance, which was going on out of sight of the place where he was seized by defendant, it was held, that the defendant was not entitled to notice of an action of trespass brought against him by plaintiff for the assault. (*Ib.*)

Where a magistrate illegally exacted a fee for granting an alchouse licence, it was held, that he was liable to an action to recover it back without notice of the action, because the fee could not have been taken by him as a justice, *colore officii*. (*Morgan v. Palmer*, 2 B. & C. 729; 4 D. & R. 283, S. C.; and see *Irving v. Wilson*, 4 T. R. 485; *Greenway v. Hurd*, *Id.* 553; and tit. "*Constable*," Vol. I.)

Where an action was brought to recover a penalty for acting as a magistrate without a qualification (under the statute 18 Geo. 2, c. 20), it was held, that the defendant was not entitled to notice, the question being whether he was a magistrate at all. (*Per Wood, B.*, *Wright v. Horton*, *Holt's N. P. C.* 458; 1 Stark. 400, S. C.)

Statute applies  
only to acts done  
and to actions on  
*assumpsit* as well  
as for *torts*.

The statute applies only to acts done, and not to a mere *nonfeasance*, as the non-payment of money due on a contract, etc. (See *Blanchard v. Bramble*, 3 M. & Sel. 131; *Atkins v. Banwell*, 3 East, 92.)

It was formerly supposed, that the necessity for giving notice of ac-

tion, etc., only applied in actions for *torts*, and did not apply where the magistrate or officer was sued in *assumpsit*, for money had and received, to recover back money illegally obtained. (See *Parsons v. Blandy*, *Wightw.* 24-5; and *Wallace v. Smith*, 5 *East*, 122.) But it is now clearly established, that the *form of action* is immaterial, and that a notice of action must be given to a turnpike collector, or other officer, before an action of *assumpsit* to recover back money *bonâ fide*, but illegally, received, can be sustained. (*Waterhouse v. Keen*, 4 *B. & C.* 211; 6 *D. & R.* 257, *S. C.* See the case of *Morgan v. Palmer*, *ante*, 164; 2 *Chit. Stat.* 947.)

But, where a local Act directed that the guardians, etc., of a parish should be sued in the name of their vestry clerk, and required notice to be given of any action for anything done in pursuance of the Act, it was held, that notice was not necessary in an action for work and labour and that the enactment only applied to actions of *tort*. (*Fletcher v. Greenwood or Greenwell*, 4 *Dowl.* 166; 1 *Gale*, 34, *S. C.*)

A distress and replevin, being an action *in rem*, is not within the statute. (*Fletcher v. Wilkins*, 6 *East*, 283; *Milward v. Caffin*, 2 *Bl. Rep.* 1330; *Waterhouse v. Keen*, 6 *D. & R.* 257; 4 *B. & C.* 211, *S. C.*; but see *Pearson v. Roberts*, *Willes*, 668; *Harper v. Carr*, 7 *T. R.* 270.)

*Form of Notice.*—It should be in the form of a notice, and not like a mere letter. Therefore, a letter from the plaintiff's attorney, declaring that he was instructed to take legal proceedings, was held bad. (See *Lewis v. Smith*, *Holt's N. P. C.* 27. And see *Norris v. Smith*, 2 *P. & D.* 353; 10 *Ad. & Ell.* 180, *S. C. post*, 167.)

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Form of notice. Mere letter not enough.

It has been held, before the Uniformity of Process Act, 2 *Will.* 4, c. 39, that the notice should specify the nature of the process intended to be sued out. (*Lovelace v. Curry*, 7 *T. R.* 631.) It is apprehended, however, that since that statute and the Common Law Procedure Act, 1852, this is no longer necessary. Where a writ was sued and served as described in the notice of action, but afterwards discontinued, and, within the time limited by the statute, another writ, *ejusdem generis*, was sued out and served, in which another person was joined as defendant, it was held, that the notice given was sufficient; for that the plaintiff was not confined by such notice to one individual writ, but only to such writ or writs specified in the notice as applied to a similar cause of action. (*Jones v. Simpson*, 1 *C. & J.* 174; 1 *Tyrwh.* 32, *S. C.*)

Describing process.

It is not, it seems, necessary to name all the parties meant to be included in the action, or to express whether the action is intended to be joint or several. (*Bax v. Jones*, 5 *Price*, 168; *S. P. on Home Circuit at Maidstone*, *A. D.* 1824; 2 *Chit. Stat.* 949; *Jones v. Simpson*, 1 *Crom. & J.* 174; *Agar v. Morgan*, 2 *Price*, 126.) In a case where the same person acted as a clerk to two bodies of public officers, and a notice of action, required by the statute, was given him, addressed to him as clerk to the one body, the cause of action arising under the supposed authority of the other body, it was held, that the notice was insufficient. (*Hider v. Dorrell*, 1 *Taunt.* 383.)

Parties to action.

The form of action to be brought need not be specified in the notice. It is sufficient if it state the cause of action. (*Sabin v. Deburgh*, 2 *Camp.* 196; *vide Breese v. Jerdein and others*, 12 *Law J., N. S., Q. B.* 234, in which case the question was raised but not decided.)

Form of action.

If, however, it be stated, it has been held that the plaintiff must declare accordingly. And, therefore, where notice given was of an action on the case for false imprisonment and assault, and the action brought was for trespass and false imprisonment, it was held that it was not sufficient. (*Strickland v. Ward*, 7 *T. R.* 631, n. And see *Robson v. Spearman*, 3 *B. & Ald.* 493.) It should be noticed, however, that, in the case of *Strickland v. Ward*, the notice did not state the process

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at all, and, therefore, was defective on that ground, the case having been decided before the Uniformity of Process Act, 2 Will. 4, c. 39; and *quare*, whether the description of the form of action might not be rejected as surplusage, the notice containing a true description of the cause of action? See the observations of Lord *Loughborough*, C.J., and *Gould*, J., in *Wood v. Folliott* (cited 3 B. & P. 552, in the note), who seem to have been of that opinion. In *Sabin v. Deburgh* (2 Camp. 198), Lord *Ellenborough*, in allusion to the case of *Lovelace v. Curry*, said, "I do not disapprove of anything laid down in that case; but I am not disposed to carry it further, lest actions of this kind should be entirely defeated."

The notice must, according to the words of the Act, *clearly and explicitly* state the *cause of action*. Even though an Act merely require a notice of the intended action, without saying *cause of action*, yet the notice must state it. (*Towsey v. White*, 5 B. & C. 183; 7 D. & R. 810, S. C.)

It should shew the time and place where the act complained of was done. (*Breese v. Jerdein*, 12 L. J., N. S., Q. B. 234; and see *Martins v. Upcher*, 11 Id. 291.)

A notice in the form of a declaration and unnecessarily ample would do, if it express the cause of action with sufficient clearness. (*Gimbert v. Coyney*, 1 M'Clel. & Y. 469; *Brown v. Tanner*, Id.; *Breese v. Jerdein and others*, 12 L. J., N. S., Q. B. 234.)

It is sufficient, though it state the act complained of to have been done by more parties than it really was. (*Breese v. Jerdein*, *supra*.)

And it seems that the notice need not specify or allude to the ground upon which the magistrate acted, but may merely describe the trespass or act complained of. (*R. v. Devon (Justices)*, 1 M. & Sel. 412.)

It is sufficient to inform the defendant *substantially* of the ground of complaint. (*Jones v. Bird and others*, 5 B. & Ald. 837; 1 D. & R. 497, S. C.) And in that case it was held, that such notice is not to be construed with the same strictness as is generally required in pleading, provided there be sufficient cause of action shewn upon the face of it, sufficiently expressed to apprise the party thereof. *Et per Abbott*, C.J., "I think the notice is sufficient, and that it ought not to be construed with great strictness; its object being merely to inform the defendant substantially of the ground of complaint, but *not* of the mode or manner in which the injury has been sustained;" and *per Bayley*, J., "It is quite sufficient if it calls the attention of the defendants to the general nature of the injury, so that they may go to the premises, and see what the ground of complaint is. If it were otherwise, it would be necessary, in many cases, to have a notice with several counts in it."

A notice of action against a toll collector, for demanding and taking of plaintiff toll for and in respect of certain things exempted from toll by a certain Act, was held too uncertain, and bad. (*Freeman v. Line*, 2 Chit. R. 673; S. P. *Lofft*, 58.)

Where the notice was of an action of trespass, for seizing goods value £2 in plaintiff's dwelling-house, it was held, that the plaintiff could not recover for a larger sum, or anything for the trespass in the dwelling-house. (*Stringer v. Martyr*, 6 Esp. 134.)

### Variance in facts of notice.

The notice must not misstate any material fact. Where, in an action against two justices of the peace for illegally convicting the plaintiff, and issuing a warrant of distress against his goods, and under the same entering his house and taking his goods, the notice of action stated the warrant to have been *directed to A. B.*, and, when produced at the trial, it was found to have been *directed to C. D., constable of H.*, it was held, that the variance was fatal, although A. B. executed the warrant, and though it might have been unnecessary to state to whom the warrant was directed. (*Aked v. Stocks and others*, 1 M. & P. 346; 4 Bing. 509, S. C. But *quare*, whether this case would now be followed.)

The notice must positively shew that an action will be brought, and not be merely a conditional notice.

Where trustees of a lighting and paving Act were entitled to a certain number of days' notice of action for anything done in pursuance of the Act, a notice that, unless the name of the party on whose information they had taken certain steps were given up, proceedings would be taken against them, was held bad, because it was conditional; and also, *per Patteson, J.*, because it should have specified that the action would be commenced at the expiration of the number of days mentioned in the Act. (*Norris v. Smith*, 2 *Per. & Dav.* 353; 10 *Ad. & El.* 180, *S. C.*)

*Indorsement on Notice, of Name, etc., of the Attorney, etc.*—It is sufficient to indorse the *initial* of the *Christian name* of the attorney, with his surname and abode in words at length. (*Mayhew v. Locke*, 7 *Taunt.* 63; 2 *Marsh.* 377, *S. C.*) And, where one of the initials of the attorney on the record had been omitted in the indorsement of the notice, his name being Thomas Adam Williams, and the indorsement being "T. & W. A. Williams," this was held sufficient; for the Act is not to be construed with extreme rigour; and it does not require all the names of the attorneys to be inserted, but merely the *name*, and, therefore, does not seem to require the Christian name. (*James v. Swift*, 4 *B. & C.* 681; 6 *D. & R.* 625; 2 *C. & P.* 237, *S. C.*)

In *Cook v. Curry* (*Durham Summer Assizes*, 1789), *Thomson, B.*, held, that the attorney's name and place of abode being in the *body*, instead of on the *back*, of the notice, was sufficient, on the grounds of the statute being, that the justice might be enabled to tender amends to the party or his attorney; and see the case of *R. v. Bigg* (3 *P. Wms.* 419), in which a writing on the inside of a bank-note was holden to be properly described as an indorsement, even in an indictment for forgery. *Sed quære*. (See *Lovelace v. Curry*, 7 *T. R.* 635.)

The attorney giving the notice may describe himself generally of the town in which he resides, as of "*Bolton-in-le-Moor*." (*Crook v. Curry*, *Durham Summer Assizes*, 1789.) But "*London*," "*Manchester*," or other such large town, generally, would not be sufficient; and, when the attorney was described in the notice as of a place in London which in fact was in Westminster, it was holden to be fatal. (*Stears v. Smith*, 6 *Esp.* 138.) It has been held, that an attorney's describing himself generally of "*Birmingham*" would do; but *quære*, whether that would now suffice, that place having become so large? (See *Osborne v. Gough*, 3 *B. & P.* 551.)

But, if the description do not indicate the residence of the attorney, it is insufficient. Where the indorsement was "given under my hand at Durham," without any other notification of residence, it was held to be insufficient (*Lovelace v. Curry*, *per Lawrence, J.*, citing *Taylor v. Fenwick*, 7 *T. R.* 635), being a mere description, not of residence, but of the place of signature.

A notice of action against a custom-house officer "for breaking the plaintiff's house in Cable Street, in the parish of G.," was held not to be a sufficient description of the plaintiff's place of abode, within the 23 *Geo. 3*, c. 70, s. 30, and the 24 *Geo. 3*, st. 2, c. 47, s. 35; for the plaintiff may have removed since the trespass was committed, or he may have had two houses, and never resided in the *locus in quo*. (*Williams v. Burgess*, 3 *Taunt.* 127. And see *Wood v. Folliott*, 3 *B. & P.* 552, *n.*)

In the case of *Sabin v. Deburgh* (2 *Camp.* 196), the attorney, who had indorsed and served the notice, was asked, on cross-examination, Whether he had, at the time, taken out his certificate? And he answered, that he had ordered his clerk to take it out, and had given him money for that purpose; and Lord *Ellenborough* held, that it was sufficient evidence of his being qualified to act as an attorney. It does not appear in that case that the witness had indorsed the notice, as an *attorney*, specifically, or merely as *agent*; and *quære*, whether, as the

## 10. Actions against.

Notice must not be a merely conditional notice.

Attorney *de facto*.

10. *Actions against.* words of the statute are "attorney or agent," it is essential that he should actually be an attorney?

Where plaintiff  
an infant.

Notice of action signed by "A. E. P., solicitor, acting on the behalf and as the prochein amy of the plaintiff," who was an infant, was held sufficient, where notice was required to be given "by the attorney or agent." (*De Gondouin v. Lewis*, 10 *Ad. & Ell.* 117; *S. C.*, 2 *Per. & Dav.* 283.)

Service of notice.

*Service of Notice.*—The statute directs the notice to be delivered to the justice, or left at the usual place of his abode. The service may be by the attorney's clerk; it need not be by the attorney's own hand. (*Morgan v. Leach*, 12 *L. J.*, *N. S.*, *M. C.* 4.)

Time for serving  
it.

*Time for serving the Notice.*—The day of delivering the notice and that of bringing the action must both be excluded. (*Young v. Higgon*, 6 *Mee. & W.* 49; 8 *Dowl.* 212, *S. C.*) A notice, therefore, given on the 26th of March, of an action commenced on the 26th of April, is not sufficient. (*Ib.*; *Webb v. Fairmaner*, 3 *M. & W.* 473; *Reg. v. Shropshire (Justices)*, 8 *Ad. & Ell.* 173; *Blunt v. Heslop*, 8 *Ad. & Ell.* 577. And see further tit. "Time," *Vol. V.*)

Proof of service.

The onus of proof of service is, by the 12th section, imposed on the plaintiff.

Waiver of.

The service of the notice is a condition precedent to the plaintiff's recovering, and cannot be dispensed with. Therefore, where a magistrate had sent to the plaintiff a paper writing, reciting the notice that had been served on him, and tendering amends in respect of the matter contained in such notice, proof of such notice was still required. (*Martins v. Upcher*, 1 *Dowl. N. S.* 555; 11 *L. J.*, *N. S.*, *Q. B.*, 291, *S. C.*)

### 3. THE LIMITATION OF ACTIONS.

Limitation of  
actions.

By the 11 & 12 Vict. c. 44, s. 8, it is enacted that no action shall be brought against any justice of the peace for anything done by him in the execution of his office, unless the same be commenced within six calendar months next after the act complained of shall have been committed.

Some statutes allow of a lesser time than the six months for bringing the action. Thus the 1 Will. 4, c. 64, s. 28, relative to the licensing of alehouses, limits the bringing of the action to three months; and then the action must be brought within that period.

General limita-  
tion of actions  
under local and  
personal Acts.

It may be as well in this place, to notice the 5 & 6 Vict. c. 97, by s. 5 of which, after reciting that, "divers Acts commonly called public, local and personal, or local and personal Acts, and divers other Acts of a local and personal nature, contain clauses limiting the time within which actions may be brought for anything done in pursuance of the said Acts respectively: and that the periods of such limitations vary very much, and it is expedient that there should be one period of limitation only;" enacts, "That from and after the passing of this Act (10 August, 1842), the period within which any action may be brought for anything done under the authority or in pursuance of any such Act or Acts shall be two years, or in case of continuing damage, then within one year after such damage shall have ceased; and that so much of any clause, provision, or enactment by which any other time or period of limitation is appointed or enacted, shall be, and the same is hereby, repealed."

Construction of  
Act.

As to the meaning of the words, "for anything done," see the cases, *ante*, 163.

The six months are to be reckoned *exclusive* of the day of committing the act. Where a party was, on the 14th of December, discharged from

prison (to which he had been improperly committed), and the writ issued on the 14th of June, it was held the action was commenced in time. (*Hardy v. Ryle*, 9 B. & C. 603; 4 *Man. & Ry.* 295; *Pellew v. Hundred of Wonford*, 9 B. & C. 134; 4 *Man. & Ry.* 130. And see further, tit. "Time," Vol. V.)

In the case of a continued imprisonment, the magistrate is liable to answer in an action for such part of the imprisonment as was suffered under his warrant within six calendar months before the action commenced against him. (*Massey v. Johnson*, 12 *East*, 67; *Pickersgill v. Palmer*, *Bull. N. P.* 24.) But, if the plaintiff give notice pending the imprisonment, he is bound to proceed within six months after the notice; for, as to any subsequent cause of action, there is no notice. (*Weston v. Fournier*, 14 *East*, 491.)

The defendant wrongfully seized the plaintiff's goods, under an alleged distress for church-rate, and gave notice that, unless they were redeemed within five days, they would be sold. In the meantime, the defendant removed the goods from the plaintiff's house into another county, from whence they were brought back, and, at the expiration of the five days, sold:—Held, that the seizure, removal, and sale of the goods were distinct acts of trespass, and that an action brought within three calendar months of either was within the time limited by the 53 Geo. 3, c. 127, s. 12. (*Collins v. Rose*, 7 *Dowl. P. C.* 796; 5 *M. & Wels.* 194, *S. C.*)

By the Brighton Improvement Act, actions for any injury done by the commissioners under the Act are to be brought within six months after the thing done. The defendants, proceeding under that Act to dig a sewer, cracked the walls of the plaintiff's house; it was held, that the plaintiff's right of action was limited to six months after the day on which the crack was occasioned, and did not continue for as long a time as the crack continued. (*Lloyd v. Wigney*, 6 *Bing.* 489; 4 *M. & P.* 222, *S. C.*)

#### 4. VENUE.

By the 11 & 12 Vict. c. 44, s. 10, it is provided, that in every such action the venue shall be laid in the county where the act complained of was committed; or, in actions in the county Court, the action must be brought in the Court within the district of which the act complained of was committed. Provided that no action shall be brought in any such county Court against a justice of the peace for anything done by him in the execution of his office, if such justice shall object thereto. And, if, within six days after being served with a summons in any such action, such justice, or his attorney or agent, shall give a written notice to the plaintiff in such action that he objects to being sued in such county Court for such cause of action, all proceedings afterwards had in such county Court in any such action shall be null and void.

Where the defendant committed his servant for insolent disobedience, it was held, that the action must be laid in the proper county, as the defendant had assumed to act there as a justice, and assumed the right to commit as such. (*Holton v. Boldero*, cited per *Curiam*, 5 *Bing.* 339.)

#### 5. PLEA OF GENERAL ISSUE.

Also, by the 11 & 12 Vict. c. 44, s. 10, it is enacted that, in every such action the defendant shall be allowed to plead the general issue therein, and to give any special matter of defence, excuse, or justification in evidence under such plea at the trial of such action.

Under the provisions of the like nature of the repealed Act, it was held that they extended to actions of *assumpsit* as well as *tort* brought against officers for acts done in the execution of their office (*Waterhouse v.*

10. *Actions against.*

*Keen*, 4 B. & C. 200; 6 D. & R. 257); but not to a distress or action of replevin, which is a proceeding *in rem* (*Fletcher v. Wilkins*, 6 East, 283, *per Bayley*, J.); nor to actions for non-payment of money, pursuant to contract (*Atkins v. Banwell*, 3 East, 92; *Blanchard v. Bramble*, 3 M. & Sel. 131.)

By the 5 & 6 Vict. c. 97, s. 3, provisions in Acts called public, local and personal, or local and personal, permitting any party to plead the general issue only, and to give special matter in evidence without specially pleading the same, are repealed.

## 6. TENDER OF AMENDS BEFORE ACTION, AND PAYMENT OF MONEY INTO COURT AFTER ACTION COMMENCED.

## Tender and payment of money into Court.

By the 11 & 12 Vict. c. 44, s. 11, it is enacted, "That in every such case, after notice of action shall be so given as aforesaid, and before such action shall be commenced, such justice, to whom such notice shall be given, may tender to the party complaining, or to his attorney or agent, such sum of money as he may think fit, as amends for the injury complained of in such notice; and, after such action shall have been commenced, and at any time before issue joined therein, such defendant, if he have not made such tender, or in addition to such tender, shall be at liberty to pay into Court such sum of money as he may think fit, and which said tender and payment of money into Court, or either of them, may afterwards be given in evidence by the defendant at the trial, under the general issue aforesaid; and, if the jury at the trial shall be of opinion that the plaintiff is not entitled to damages beyond the sum so tendered or paid into Court, or beyond the sums so tendered and paid into Court, then they shall give a verdict for the defendant, and the plaintiff shall not be at liberty to elect to be nonsuit, and the sum of money, if any, so paid into Court, or so much thereof as shall be sufficient to pay or satisfy the defendant's costs in that behalf, shall thereupon be paid out of Court to him, and the residue, if any, shall be paid to the plaintiff; or if, where money is so paid into Court in any such action, the plaintiff shall elect to accept the same in satisfaction of his damages in the said action, he may obtain from any judge of the Court in which such action shall be brought, an order that such money shall be paid out of Court to him, and that the defendant shall pay him his costs to be taxed; and thereupon the said action shall be determined, and such order shall be a bar to any other action for the same cause."

A justice having pleaded a tender of amends, the plaintiff obtained a rule for the defendant to bring the money into Court, and for the plaintiff to take the same upon discontinuing. (*Lawrence v. Cox*, Bull. N. P. 24.)

By a local Act, 6 Geo. 4, c. 70, certain commissioners were empowered to cause any "present or future sewers, ditches, drains, etc., to be opened enlarged, altered, or cleansed;" and it was enacted that, in case any action should be brought against any person for anything done in pursuance of the Act, or in relation to the matters therein contained, the plaintiff should not recover in any such action, if tender of amends should have been made to him, etc., or his attorney, by or on behalf of the defendant, etc., before such action brought; and, in case no such tender should be made, that it should be lawful for the defendant, by leave of the Court, to pay money into Court; and, if the matter should appear to have been done in pursuance and under the authority of the Act, and after sufficient satisfaction made or tendered as aforesaid, then that the jury should find for the defendant. The commissioners, of whom the defendant was one, appointed a committee to inspect a certain ditch, with a view to widening the same, and to report thereon. The committee having reported thereon in favour of widening the ditch, the commissioners appointed a second committee, of whom the defendant

was one, to confer with a surveyor respecting the work, with power to two of them to act. The defendant, being afterwards told by the clerk to the commissioners that he might proceed without further instructions from the commissioners, took the plaintiff's land for the purpose of widening the drain, without having given him notice or obtained his consent. The land was taken for the *bonâ fide* purpose of widening the drain. The defendant, before action, tendered £10 as amends, which the plaintiff refused to accept; but no tender was pleaded, nor was the amount paid into Court. The jury found the trespass, and that the damage amounted to £5. It was held, first, that, although neither the defendant nor the commissioners were authorized to take plaintiff's land without his consent in writing, yet the defendant was entitled to the protection of the Act. (*Jones v. Gooday*, 9 *Mee. & W.* 736; 1 *Dowl.*, N. S. 914, S. C.)

It was also held, in the same case, that the defendant was not bound to plead the tender, or pay the amount tendered into Court.

Where the notice of action given to a justice, in pursuance of the Act, is defective by omitting the place where the act complained of was done, or the like, a tender of amends will not cure the defect. (*Martins v. Upcher*, ante, 168.)

In an action against a magistrate for an assault and false imprisonment, after the general issue pleaded, the Court will permit the defendant to withdraw his plea, and pay money into Court and plead *de novo*. (*Devaynes v. Boys*, 7 *Taunt.* 33; 2 *Marsh.* 356, S. C.) And the Court will permit this, though after issue joined and notice of trial given. (*Nestor v. Newcombe*, 4 *D. & R.* 776; 3 *B. & C.* 159, S. C.)

10. *Actions against.*

Payment of money into Court.

#### 7. DAMAGES.

By the 11 & 12 Vict. c. 44, s. 13, it is enacted, "That, in all cases where the plaintiff in any such action shall be entitled to recover, and he shall prove the levying or payment of any penalty or sum of money under any conviction or order, as parcel of the damages he seeks to recover, or if he prove that he was imprisoned under such conviction or order, and shall seek to recover damages for any such imprisonment, he shall not be entitled to recover the amount of such penalty or sum so levied or paid, or any sum beyond the sum of twopence as damages for such imprisonment, or any costs of suit whatsoever, if it shall be proved that he was actually guilty of the offence of which he was so convicted, or that he was liable by law to pay the sum he was so ordered to pay, and (with respect to such imprisonment) that he had undergone no greater punishment than that assigned by law for the offence of which he was so convicted, or for non-payment of the sum he was so ordered to pay."

Damages.

In *Barton v. Bricknell* (13 *Q. B.* 393; 20 *L. J.*, *M. C.* 1), it was contended that this section, as to the damages, did not apply where the action was brought for seizing goods, and also that the costs of quashing the conviction could be recovered as special damages; but it became unnecessary for the Court to give an opinion upon either point.

#### 8. COSTS.

By the 11 & 12 Vict. c. 44, s. 14, it is enacted, "That, if the plaintiff in any such action shall recover a verdict, or the defendant shall allow judgment to pass against him by default, such plaintiff shall be entitled to costs in such manner as if this Act had not been passed; or if in such case it be stated in the declaration, or in the summons and particulars in the county Court, if he sue in that Court, that the act complained of was done maliciously, and without reasonable and probable cause, the plaintiff, if he recover a verdict for any damages, or if the defendant allow judgment to pass against him by default, shall be entitled to his

Costs.



11. *Slandering, etc., a Justice.*

Repeal of provision in local and personal Acts giving double and treble costs.

Costs only between party and party allowed.

full costs of suit, to be taxed as between attorney and client; and in every action against a justice of the peace for anything done by him in the execution of his office, the defendant, if he obtain judgment upon verdict or otherwise, shall, in all cases, be entitled to his full costs in that behalf, to be taxed as between attorney and client."

By the 5 & 6 Vict. c. 97, s. 1, it is enacted, "That so much of any clause, enactment, or provision in any Act or Acts commonly called public, local and personal, or local and personal, or in any Act or Acts of a local or personal nature, whereby it is enacted or provided that either double or treble costs, or any other than the usual costs between party and party, shall or may be recovered, shall be, and the same are hereby repealed: Provided always, that, in lieu thereof, the usual costs between party and party shall and may be recovered, and no more."

### 9. CONSEQUENCE OF DEFECT IN PLAINTIFF'S PROOFS.

The 11 & 12 Vict. c. 44, s. 12, enacts that if, at the trial of any such action, the plaintiff shall not prove that such action was brought within the time hereinbefore limited in that behalf, or that such notice as aforesaid was given one calendar month before such action was commenced, or if he shall not prove the cause of action stated in such notice, or if he shall not prove that such cause of action arose in the county or place laid as venue in the margin of the declaration, or (when the plaintiff shall sue in the county Court) within the district for which such Court is holden, then, and in every such case, such plaintiff shall be nonsuit, or the jury shall give a verdict for the defendant.

## XI. Slandering or abusing, etc., a Justice.

Slandering or abusing a Justice.

A justice of the peace is not to be slandered or abused. The plaintiff declared that he was a justice of the peace; and that, upon a *colloquium* of him and the execution of his office, the defendant said, "*You are a rascal, a villain, and a liar.*" After verdict for the plaintiff, it was moved, in arrest of judgment, that these words are not *actionable*. It was urged for the plaintiff that there is a great difference between magistrates and common tradesmen: words of the latter must affect them in their particular way of dealing; but anything that tends to impeach the credit of the former is *actionable*. And, although an *indictment* might not lie for these words, as perhaps not tending to a breach of the peace, yet, nevertheless, they are *actionable*; for, in many cases, words are *actionable* which are not *indictable*. After consideration, Pratt, C.J., delivered the opinion of the Court, that, though *rascal* and *villain* were uncertain, yet, being joined with *liar*, and spoken of a justice of the peace, they did import a charge of acting corruptly and partially, and therefore there ought to be judgment for the plaintiff. (*Aston v. Blagrove*, 1 *Str.* 617; 2 *Ld. Raym.* 1369, *S. C.*)

Words, whether verbal or written, imputing an unfitness or inability to perform an office or employment of profit, or want of integrity in an office of honour, are *actionable*. (*How v. Prinn*, 2 *Salk.* 695 (a); *Anon.*, 5 *Co.* 125; *Aston v. Blagrove*, 2 *Ld. Raym.* 1369; 1 *Str.* 617, *S. C.*; *Cromwell's case*, 4 *Co.* 12, b.)

Indictment for.

In *R. v. Revel* (1 *Str.* 420), the defendant was *indicted* for saying of Edward Lawrence, a justice of the peace, in the execution of his office, "*You are a rogue and a liar.*" It was moved, after verdict for the King, in arrest of judgment, that, though the justice might have committed him for the contempt, yet the words are not *indictable*, since it is not to be presumed they would provoke the justice to a breach of the

peace, which is the reason why indictments have been held to lie for words. But, by the Court, the allowing he might be committed shows they were indictable. It is true, the justice may make himself judge, and punish him immediately: but still, if he thinks proper to proceed less summarily by way of indictment, he may. The true distinction is, that where the words are spoken in the presence of the justice, there he may commit; but, where it is behind his back, the party can only be indicted for a breach of the peace. Judgment for the King. (See *R. v. Weltje*, 2 Camp. 142.)

The Court refused to grant a rule for a criminal information for words spoken of a magistrate, charging him with oppression in his office, they not being spoken at the time he was acting in his office, and not, therefore, amounting to an immediate obstruction of the administration of justice. (*Ex parte the Duke of Marlborough*, 13 L. J., N. S., M. C. 105. And see *R. v. Pocock*, 2 Strange, 1157.)

Nevertheless, according to the distinction in the aforesaid case of *Aston v. Blagrove*, although an information or indictment might not lie, yet it doth not follow but that the words were actionable. (*Kent v. Pocock*, 2 Stra. 1168.)

As to the power of a magistrate to commit a party for abusing him, or any other contempt, see tit. "Sessions," Vol. V. Such a commitment must be in writing. (*Mayhew v. Locke*, 7 Taunt. 63; 2 Marsh. 377, S. C.; and see *R. v. James*, 5 B. & Ald. 891; 1 D. & R. 559, S. C. (See a form of commitment, tit. "Commitment," Vol. I., and tit. "Warrant," Vol. V.

*Mayhew v. Locke* (7 Taunt. 63; 2 Marsh. 377, S. C.) was an action of trespass for an assault and false imprisonment. Plea, general issue. The defendant was a magistrate; and the plaintiff, who was a constable, having been engaged till evening in executing a warrant signed by the defendant, inquired of him whether anything was allowed for his service; and, on being answered in the negative, said to the defendant, "If you have any more warrants to serve, do not send them to me, for I will not serve them;" the defendant mildly replied, "What is that you say, Mayhew?" The plaintiff repeated, "If you have any more warrants to serve, do not send them to me, for I will not serve them; you may serve them yourself." The defendant immediately gave a verbal order that the plaintiff should be taken away to the cage, in the town of Farnham; which was done, and he was confined until the next morning, when he was discharged. It was urged for the defendant that he was warranted, as a magistrate, in committing the plaintiff to prison for the contempt in using the disrespectful language above stated. The point was reserved, the jury finding a verdict for the plaintiff, with £5 damages. *Gibbs*, C.J., delivered the opinion of the Court and said, "As to the merits, without considering whether the words spoken were or were not a sufficient cause of commitment by the magistrate, we are of opinion that this commitment, which was clearly a commitment by way of punishment, and was made by word of mouth only, without warrant in writing, cannot be supported; for it is clearly laid down in 2 Hawk. c. 16, s. 3, and by Lord Hale (2 Hale, 122), that such a commitment by a magistrate must be made by warrant in writing." (See tit. "Commitment," Vol. I.)

In *R. v. Symonds* (Cas. Temp. Hardw. 240), an information was moved for against the defendant, for assaulting and beating the Mayor of Yarmouth, being a justice of the peace, in the execution of his office. On showing cause, the question was, whether the defendant could justify, the mayor having struck him first. By Lord Hardwicke, C.J., he may justify it; for, though a magistrate is protected by the law whilst he is in the execution of his office, yet, in this instance he hath forfeited that protection, by beginning a breach of the peace himself.

11. *Slandering, etc., a Justice.*

Information for.

Commitment.

Assault on magistrate in execution of office.

12. *Clerks to, their salaries and fees.*

Power to appoint clerks.

Clerk no permanent office.

Fees to be taken by justices.

Justices to settle a table of fees.

## XII. Clerks to. Fees of Justices and their Clerks.

There can be no doubt that justices of the peace, in or out of sessions, may employ clerks to assist them in the execution of the duties of their office.

A clerk so employed has no interest in his office. It is merely an office at the pleasure of the magistrates, and resembles that of a vestry clerk. (*Ex parte Sandys*, 1 Nev. & M. 591. As to a vestry clerk, see tit. "*Vestry*," Vol. V.)

By the Municipal Corporations Act, 5 & 6 Will. 4, c. 76, s. 102, the justices of the borough are expressly required to appoint a clerk, but who shall not be clerk of the peace, or an alderman or councillor, nor be concerned in the prosecution of offenders committed by the borough justices. (See tit. "*Corporation*," Vol. I.)

In the oath of office, as it is set out, *ante*, 122, are these words: "And that you take nothing for your office of justice of the peace to be done, but of the Queen, and fees accustomed, and costs limited by statute."

And by statute their fees in many cases are limited and ascertained; as is noted under the respective titles, where they occur throughout this work.

And for the rest, it is provided generally, by the 26 Geo. 2, c. 14, s. 1, "That the justices of the peace throughout that part of Great Britain called England, at their respective general quarter sessions of the peace, to be held next after the 24th day of June, 1753, shall, and they are hereby required to make and settle a table of the fees which shall be taken by clerks to justices of the peace within the county, city, or other division for which such respective general quarter sessions shall be held; and such respective tables of fees being approved by the justices of the peace at the next succeeding general quarter sessions of the peace for such county, city, or other division, with such alterations as such justices of the peace so assembled shall think proper, shall be laid before the judges at the next assizes, or at the great sessions for the principality of Wales (*a*), and counties palatine of Chester, Lancaster, and Durham, for the respective county, city, or other division; and the said judges are hereby authorized and required to ratify and confirm such respective tables of fees, in such manner and form as the same shall be made, settled, and approved of by the said justices, or with such alterations, additions, or abatements as to such judges shall appear to be just and reasonable; and it shall and may be lawful for the said justices of the peace, in their respective quarter sessions assembled, from time to time to make any other table of fees to be taken, instead of the fees contained in the table which shall have been ratified and confirmed by the judges of assize; and, after the same shall have been approved by the justices of the peace at the next succeeding general quarter sessions, in manner as aforesaid, to lay such new table of fees before the judges at the next assizes, or at the great sessions for the principality of Wales, and counties palatine of Chester, Lancaster, and Durham, who are hereby empowered and authorized to approve and ratify the same in manner as aforesaid, if they think fit; but no table of fees to be made and settled by the said respective justices of peace shall be of any validity or effect whatsoever, until the same shall be ratified and confirmed by the said judges."

Where a table of fees was made at the Midsummer sessions, and submitted to the succeeding Michaelmas sessions, but at the latter sessions

(a) By the 1 Will. 4, c. 70, the Welsh judicature is abolished.

the consideration of the matter was adjourned to the following Epiphany sessions, when the table was approved, it was held that the directions of the section had not been complied with, and that the table was, therefore, invalid. (*Bowman v. Blyth*, 7 *El. & Bl.* 26, 47; 26 *L. J., M. C.* 57; 27 *Id.* 21, *S. C.*)

12. *Clerks to, their salaries and fees.*

By sect. 2, "If at any time after the space of three calendar months from the time that such table of fees shall be made and ratified as aforesaid, any clerk or clerks to any justice or justices of the peace, or any person or persons acting as such, shall, under pretence of any matter or thing done, transacted, or performed by such justice or justices in the execution of his or their office or offices, or done, transacted, or performed by such person or persons as clerk or clerks to such justice or justices, demand or receive any other or greater fee than shall have been ascertained, ratified, and confirmed in manner as aforesaid, such person shall for every such offence forfeit and pay £20 to any person who shall sue for the same by action of debt, bill, plaint, or information, in any of his Majesty's Courts of record at Westminster, wherein no essoign, privilege, protection, wager of law, or more than one imparlance shall be granted or allowed."

Clerks taking other fees.

Penalty.

If a clerk demands and receives a fee for the taking of recognizances as for a principal and two sureties, there being in fact only one surety, he is not guilty of an offence or liable to a forfeiture under this section, if he really believed that there were two sureties. (*Bowman v. Blyth*, 7 *El. & Bl.* 26.)

Sect. 3. "All the tables of fees which shall be made and settled, and ratified and confirmed, from time to time as aforesaid, shall be deposited with the clerk of the peace for the respective county, city, or other division; and each of the said clerks of the peace shall cause true and exact written or printed copies of the said tables to be placed and to be kept constantly in a conspicuous part of the room or place where the general or quarter sessions shall be held, under pain of forfeiting the sum of £10 for each offence, to be recovered by action of debt, bill, plaint, or information, in any of his Majesty's Courts of record at Westminster, wherein no essoign, privilege, protection, wager of law, or more than one imparlance shall be granted or allowed."

Tables to be deposited with clerks of peace.

Sect. 4. "All suits and actions which shall be brought or commenced by virtue of this Act shall be brought before the end of three months after the offence committed, and not otherwise."

Limitation of actions.

By the 27 Geo. 2, c. 16, s. 4 (after reciting the above Act), it is enacted, "That the table of fees to be taken by the clerks to justices of the peace for the county of Middlesex, which is, or shall from time to time be, made, settled, and approved by the said justices for the said county, at their general or quarter sessions, shall be laid before the Lord Chief Justice of the King's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or any two of them, who are hereby authorized and required to ratify and confirm such table of fees, in such manner and form as the same shall be so made, settled, and approved of, or with such alterations, additions, or abatements as to the said Lord Chief Justice of the King's Bench, the Lord Chief Justice of the Common Pleas, and the Lord Chief Baron of the Exchequer, or any two of them, shall appear to be just and reasonable; and the said justices of the peace for the said county are hereby empowered and required to make a table of such fees at their next general or quarter sessions to be held for the said county, after the 24th day of June, 1754, and to approve or alter the same at the next succeeding general or quarter sessions, and from time to time, and in like manner, to make and approve any other table of such fees."

In Middlesex.

This subject has been further provided for by the 11 & 12 Vict. c. 43, which by s. 30 enacts, "That the fees to which any clerk of the peace,

Regulations as to the payment of clerks' fees.

12. *Clerks to,  
their salaries  
and fees.*

clerk of the special sessions, or clerk of the petty sessions, or clerk to any justice or justices out of sessions, shall be entitled shall be ascertained, appointed and regulated in manner following (that is to say): the justices of the peace at their quarter sessions for the several counties, ridings, divisions of counties and liberties throughout England and Wales, and the council or other governing body of every borough in England and Wales, shall, from time to time as they shall see fit respectively, make tables of the fees which in their opinion should be paid to the clerks of the peace, to the clerks of special and petty sessions, and to the clerks of the justices of the peace within their several jurisdictions, and which said tables respectively, being signed by the chairman of every such Court of quarter sessions, or by the mayor or other head officer of any such borough respectively, shall be laid before her Majesty's principal Secretary of State; and it shall be lawful for such Secretary of State, if he thinks fit, to alter such table or tables of fees, and to subscribe a certificate or declaration that such fees are proper to be demanded and received by the several clerks of the peace, clerks of special sessions and petty sessions, and the clerks to the several justices of the peace throughout England and Wales; and such Secretary of State shall cause copies of such table or set of tables of fees to be transmitted to the several clerks of the peace throughout England and Wales, to be by them distributed to the several clerks of special sessions and petty sessions, and to the clerks to the justices within their several districts respectively; and if after such copy shall be received by such clerks or clerk he or they shall demand or receive any other or greater fee or gratuity for any business or act transacted or done by him as such clerk than such as is set down in such table or set of tables, he shall forfeit for every such demand or receipt the sum of £20, to be recovered by action of debt in any of the superior Courts of law at Westminster, by any person who will sue for the same: provided always, that until such table or set of tables shall be framed and confirmed and distributed as aforesaid it shall be lawful for such clerk or clerks to demand and receive such fees as they are now by any rule or regulation of a court of quarter sessions or otherwise authorized to demand and receive."

Now by 14 & 15 Vict. c. 55, s. 9, clerks may be paid by salaries instead of fees. (See tit. "*Fees*," Vol. II.)

Metropolitan  
police.  
Salaried justices  
in boroughs.

By the Municipal Corporations Act (5 & 6 Will. 4, c. 76), "If the council of any borough shall think it requisite that a salaried police magistrate or magistrates should be appointed within such borough, they may make a bye-law, fixing the amount of salary he or they are to receive; and, upon transmitting this to one of the principal Secretaries of State, the King may appoint one or more barristers (according to the number fixed in the bye-law), of not less than five years' standing, to be police magistrate or magistrates for the borough, with a fixed salary, to be paid out of the borough fund." (Sect. 99.) "And upon any subsequent vacancy, no new appointment shall take place until the council shall in like manner make application to one of the Secretaries of State in that behalf." (*Ib.*)

Fees of justices'  
clerks in  
boroughs.

Sects. 124 and 125 regulate the fees to be taken by justices' clerks in boroughs within the Municipal Corporations Act. (See tit. "*Corporations*," Vol. I.)

Consequences of  
taking fees im-  
properly.

As to the consequences of taking fees improperly, see tit. "*Alehouse*," Vol. I., also tit. "*Extortion*," Vol. II.

## Juvenile Offenders.

By the 10 & 11 Vict. c. 82, entitled, "An Act for the more speedy Trial and Punishment of Juvenile Offenders," after reciting that, in order in certain cases to ensure the more speedy trial of juvenile offenders, and to avoid the evils of their long imprisonment previously to trial, it is expedient to allow of such offenders being proceeded against in a more summary manner than is now by law provided, and to give further power to bail them, it is enacted, "That every person who shall, subsequently to the passing of this Act, be charged with having committed, or having attempted to commit, or with having been an aider, abettor, counsellor, or procuror in the commission of any offence which now is, or hereafter shall or may be, by law deemed or declared to be simple larceny, or punishable as simple larceny, and whose age at the period of the commission or attempted commission of such offence shall not, in the opinion of the justices before whom he or she shall be brought or appear, as hereinafter mentioned, exceed the age of fourteen years (*b*), shall, upon conviction thereof, upon his own confession or upon proof, before any two or more justices of the peace for any county, riding, division, borough, liberty, or place, in petty sessions assembled, at the usual place and in open Court, be committed to the common gaol or house of correction within the jurisdiction of such justices, there to be imprisoned, with or without hard labour, for any term not exceeding three calendar months, or, in the discretion of such justices, shall forfeit and pay such sum, not exceeding £3, as the said justices shall adjudge, or, if a male, shall be once privately whipped (*c*), either instead of or in addition to such imprisonment, or imprisonment with hard labour; and the said justices shall from time to time appoint some fit and proper person, being a constable, to inflict the said punishment of whipping, when so ordered to be inflicted out of prison: Provided always, that if such justices, upon the hearing of any such case, shall deem the offence not to be proved, or that it is not expedient to inflict any punishment, they shall dismiss the party charged, on finding surety or sureties for his future good behaviour, or without such sureties, and then make out and deliver to the party charged a certificate under the hands of such justices, stating the fact of such dismissal, and such certificate shall and may be in the form or to the effect set forth in the schedule hereto annexed in that behalf: Provided also that, if such justices shall be of opinion, before the person charged shall have made his or her defence, that the charge is, from any circumstance, a fit subject for prosecution by indictment, or if the person charged shall, upon being called upon to answer the charge, object to the case being summarily disposed of under the provisions of this Act, such justices shall, instead of summarily adjudicating thereupon, deal with the case in all respects as if this Act had not been passed."

Persons not exceeding fourteen years of age, committing certain offences, may be summarily convicted by two justices (*a*).

Justices may dismiss the accused, if they deem it expedient not to inflict any punishment.

By the 13 & 14 Vict. c. 37, s. 2, "one of the justices before whom any person shall be charged and proceeded against under this Act, or the hereinbefore mentioned Acts (*d*), before such person shall be asked whether he or she has any cause to show why he or she should not be convicted, shall say to the person so charged these words, or words to the like effect, 'We shall have to hear what you wish to say in answer

Justices to ask whether the accused wishes the case to be tried by a jury.

(*a*) As to the punishment for larceny after two convictions under this Act, see the 24 & 25 Vict. c. 96, s. 9, *post*, tit. "Larceny."

(*b*) By the 13 & 14 Vict. c. 37, the Act is extended to all persons whose age shall not exceed sixteen years,

except that no offender above fourteen is to be whipped.

(*c*) As to the punishment of whipping, see the 25 Vict. c. 18, *post*.

(*d*) These Acts are the 10 & 11 Vict. c. 82, and the 11 & 12 Vict. c. 39, the Irish Act.

*Juvenile Offenders.*

Power to justices to hear and determine.

One magistrate may, in certain cases, perform acts usually done by two.

Proceedings under this Act a bar to further proceedings.

Mode of compelling the appearance of persons punishable on summary conviction.

Power to one justice to remand and take bail.

Application of fines.

As to the summoning and attendance of witnesses.

to the charge against you; but, if you wish the charge to be tried by a jury, you must object now to our deciding upon it at once;’ and, if such person, or a parent of such person, shall then object, the justice shall proceed with the charge as if the said Acts had not been passed.”

By the 10 & 11 Vict. c. 82, s. 2, “Any two or more justices of the peace for any county, riding, division, borough, liberty, or place in petty sessions assembled, and in open Court, before whom any such person as aforesaid, charged with any offence made punishable under this Act, shall be brought or appear, are hereby authorized to hear and determine the case under the provisions of this Act: Provided always, that any magistrate of the police courts of the metropolis, sitting at any such police court, and any stipendiary magistrate sitting in open Court, having by law the power to do acts usually required to be done by two or more justices of the peace, shall and may, within their respective jurisdictions, hear and determine every charge under this Act, and exercise all the powers herein contained, in like manner and as fully and effectually as two or more justices of the peace, in petty sessions assembled as aforesaid, can or may do by virtue of the provisions in this Act contained.”

Sect. 3. “Every person who shall have obtained such certificate of dismissal as aforesaid, and every person who shall have been convicted under the authority of this Act, shall be released from all further or other proceedings for the same cause.”

Sect. 4. “Where any person whose age is alleged not to exceed fourteen years (a) shall be charged with any such offence on the oath of a credible witness before any justice of the peace, such justice may issue his summons or warrant to summon or to apprehend the person so charged, to appear before any two justices of the peace, in petty sessions assembled, as aforesaid, at a time and place to be named in such summons or warrant.”

Sect. 5. “Any justice or justices of the peace, if he or they shall think fit, may remand for further examination or for trial, or suffer to go at large upon his or her finding sufficient surety or sureties, any such person as aforesaid charged before him or them with any such offence as aforesaid; and every such surety shall be bound by recognizance to be conditioned for the appearance of such person before the same or some other justice or justices of the peace for further examination, or for trial before two or more justices of the peace in petty sessions assembled as aforesaid, or for trial at some superior Court, as the case may be; and every such recognizance may be enlarged from time to time by any such justice or justices, to such further time as he or they shall appoint; and every such recognizance which shall not be enlarged shall be discharged without fee or reward, when the party shall have appeared according to the condition thereof.”

Sect. 6. “Every fine imposed by any justices under the authority of this Act shall be paid to the clerk to the convicting justices, and shall be by him paid over to the use of the general county-rate, or rate in the nature of a general county-rate, for the county, riding, division, borough, liberty, franchise, city, town, or place, in which the offence in respect of which such fine shall be imposed may have been committed.”

Sect. 7. “It shall be lawful for any justice of the peace by summons to require the attendance of any person as a witness upon the hearing of any case before two justices, under the authority of this Act, at a time and place to be named in such summons; and such justice may require

(a) By the 13 & 14 Vict. c. 37, the age shall not exceed sixteen years. Act is extended to all persons whose

and bind by recognizance all persons whom he may consider necessary to be examined touching the matter of such charge, to attend at the time and place to be appointed by him, and then and there to give evidence upon the hearing of such charge; and, in case any person so summoned or required or bound, as aforesaid, shall neglect or refuse to attend in pursuance of such summons or recognizance, then, upon proof being first given of such persons having been duly summoned, as hereinafter mentioned, or bound by recognizance as aforesaid, it shall be lawful for the justices before whom any such person ought to have attended, to issue their warrant to compel his appearance as a witness."

*Juvenile Offenders.*

Sect. 8. "Every summons issued under the authority of this Act may be served by delivering a copy of the summons to the party, or by delivering a copy of the summons to some inmate at such party's usual place of abode; and every person so required, by any writing under the hand or hands of any justice or justices, to attend and give evidence as aforesaid, shall be deemed to have been duly summoned."

Service of summons.

Sect. 9. "The justices before whom any person shall be summarily convicted of any such offence as hereinbefore mentioned may cause the conviction to be drawn up in the form of words set forth in the schedule to this Act annexed, or in any other form of words to the same effect, which conviction shall be good and effectual to all intents and purposes."

Form of conviction.

Sect. 10. "No such conviction shall be quashed for want of form, or be removed by *certiorari* or otherwise into any of her Majesty's superior Courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."

No certiorari, etc

Sect. 11. "The justices of the peace before whom any person shall be convicted under the provisions of this Act shall forthwith thereafter transmit the conviction and recognizances to the clerk of the peace for the county, borough, liberty, or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court of general quarter sessions of the peace; [and the said clerk of the peace shall transmit to one of her Majesty's principal secretaries of state a monthly return of the names, offences, and punishments, mentioned in the convictions, with such other particulars as may from time to time be required] (a)."

Convictions to be returned to the quarter sessions.

12. "No conviction under the authority of this Act shall be attended with any forfeiture; but, whenever any person shall be deemed guilty under the provisions of this Act, it shall be lawful for the presiding justices to order restitution of the property in respect of which such offence shall have been committed to the owner thereof or his representatives; and, if such property shall not then be forthcoming, the same justices, whether they award punishment or dismiss the complaint, may inquire into and ascertain the value thereof in money, and, if they think proper, order payment of such sum of money to the true owner, by the person or persons convicted, either at one time or by instalments at such periods as the Court may deem reasonable; and the party or parties so ordered to pay shall be liable to be sued for the same as a debt in any Court in which debts may be by law recovered, with costs of suit, according to the practice of such Court."

No forfeiture upon convictions under Act, but presiding justices may order restitution of property.

13. "Whenever any justices of the peace shall adjudge any offender to forfeit and pay a pecuniary penalty under the authority of this Act,

Recovery of penalties.

(a) The part of the section within brackets is repealed by the 21 & 22 Vict. c. 67, s. 1.



*Juvenile Offenders.*

and such penalty shall not be forthwith paid, it shall be lawful for such justices, if they shall deem it expedient, to appoint some future day for the payment of such penalty, and to order the offender to be detained in safe custody until the day so to be appointed, unless such offender shall give security to the satisfaction of such justices for his or her appearance on such day; and such justices are hereby empowered to take such security by way of recognizance or otherwise, at their discretion; and, if at the time so appointed such penalty shall not be paid, it shall be lawful for the same or any other justices of the peace, by warrant under their hands and seals, to commit the offender to the common jail or house of correction within their jurisdiction, there to remain for any time not exceeding three calendar months, reckoned from the day of such adjudication, such imprisonment to cease on payment of the said penalty."

Expenses of prosecutions how to be paid.

14. "The justices in petty sessions assembled as aforesaid, before whom any person shall be prosecuted or tried for any offence cognizable under this Act, are hereby authorized and empowered, at their discretion; at the request of the prosecutor or of any other person who shall appear on recognizance or summons to prosecute or give evidence against any person accused of any such offence, to order payment to the prosecutor and witnesses for the prosecution of such sums of money as to the justices shall seem reasonable and sufficient to re-imburse such prosecutor and witnesses for the expenses they shall have severally incurred in attending before the examining magistrate, and in otherwise carrying on such prosecution, and also to compensate them for their trouble and loss of time therein, and to order payment to the constables and other peace officers for the apprehension and detention of any person or persons so charged; and, although no conviction shall actually take place, it shall be lawful for the said justices to order all or any of the payments aforesaid, when they shall be of opinion that the parties or any of them have acted *bona fide*; and the amount of expenses of attending before the examining magistrate, and the compensation for trouble and loss of time therein, and the allowances to the constables and other peace officers for the apprehension and detention of the offender, and the allowances to be paid to the prosecutor, witnesses and constables for attending at the said petty sessions, shall be ascertained by and certified under the hands of the justices in such petty session assembled as aforesaid: provided always, that the amount of the costs, charges, and expenses attending any such prosecution, to be allowed and paid as aforesaid, shall not in any one case exceed the sum of forty shillings; provided also, that no expenses shall be allowed to prosecutors, witnesses, and constables exceeding the sums allowed, according to a scale of fees and allowances authorized and settled by the justices of the peace at quarter sessions assembled, according to the statute in such case made and provided with respect to preliminary inquiries before justices of the peace in cases of felony."

Orders for payment how to be made.

15. "Every such order of payment to any prosecutor or other person, after the amount thereof shall have been certified by the justices as aforesaid, shall be forthwith made out and delivered by the clerk of the said petty session unto such prosecutor or other person, upon such clerk being paid for the same the sum of sixpence for every such person, and no more, and, except in cases hereinafter provided for, shall be made upon the treasurer of the county, riding, or division in which the offence shall have been committed, or shall be supposed to have been committed, who is hereby authorized and required, upon sight of every such order, forthwith to pay to the person named therein, or to any other person duly authorized to receive the same on his or her behalf, the money in such order mentioned, and shall be allowed the same in his accounts: provided always, that no such order shall be valid, nor shall such treasurer pay any money thereon, unless it shall have been framed and pre-

sented in such form and under such regulations as the justices of the peace in quarter sessions assembled shall from time to time direct.” *Juvenile Offenders.*

Sect. 16, reciting that offences cognizable under this Act may be committed in liberties, franchises, - cities, towns, and places which do not contribute to the payment of any county-rate, some of which raise a rate in the nature of a county-rate, and others have neither any such rate nor any fund applicable to similar purposes, and it is just that such liberties, franchises, cities, towns, and places should be charged with all costs, expenses, and compensations ordered by virtue of this Act in respect of such offences as aforesaid committed or supposed to have been committed therein respectively, enacts, that “all sums directed to be paid by virtue of this Act in respect of such offences as aforesaid committed or supposed to have been committed in such liberties, franchises, cities, towns, and places shall be paid out of the rate in the nature of a county-rate, or out of any fund applicable to similar purposes, where there is such a rate or fund, by the treasurer or other officer having the collection or disbursement of such rate or fund, and, where there is no such rate or fund in such liberties, franchises, cities, towns, or places, shall be paid out of the rate or fund for the relief of the poor of the parish or township, district or precinct therein, where the offence was committed or supposed to have been committed, by the overseers or other officers having the collection or disbursement of such last-mentioned rate or fund; and the order of Court shall in every such case be directed to such treasurer, overseers, or other officers respectively, instead of the treasurer of the county, riding, or division, as the case may require.”

Payment of costs and expenses with respect to boroughs, etc.

Sect. 17. “All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within three calendar months after the fact committed, and not otherwise; and notice in writing of such action or prosecution, and of the cause thereof, shall be given to the defendant one calendar month at least before the commencement of the action or prosecution; and in any such action or prosecution the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action, if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought by or on behalf of the defendant; and, if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action or prosecution after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant hath by law in other cases; and, though a verdict shall be given for the plaintiff in such action, the plaintiff shall not have costs against the defendant, unless the judge before whom the trial shall be shall certify his approbation of the action and of the verdict obtained thereupon.”

Proceedings against persons acting under this Act.

Sect. 18. “Nothing in this Act contained shall extend to *Scotland* or *Ireland*.” *Extent of Act.*

By the 25 Vict. c. 18, s. 1, “Where the punishment of whipping is awarded for any offence by order of one or more justice or justices made in exercise of his or their power of summary conviction, or in *Scotland* by the Court of justiciary, or by any sheriff or magistrate, the order, sentence, or conviction awarding such punishment shall specify the number of strokes to be inflicted, and the instrument to be used in the infliction of them, and, in the case of an offender whose age does not exceed fourteen years, the number of strokes inflicted shall not exceed twelve, and the instrument used shall be a birch rod.”

Regulation as to the whipping of juvenile offenders.

## Land Drainage Act.

### *Land Drainage Act.*

Restriction as to  
whippings in  
Scotland, etc.

Sect. 2. "No offender shall be whipped more than once for the same offence; and in *Scotland* no offender above sixteen years of age shall be whipped for theft, or for crime committed against person or property."

## Schedule of Forms (a).

### FORM OF CERTIFICATE OF DISMISSAL.

\_\_\_\_\_) *We*, \_\_\_\_\_ of her Majesty's justices of the peace for the  
to wit. ) county of \_\_\_\_\_, [or *I*, a magistrate of the police Court of  
as the case may be,] do hereby certify, that on the  
day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_,  
in the said county of \_\_\_\_\_, M. N. was brought before us, the said justices,  
[or me the said magistrate] charged with the following offence (that is to say)  
[here state briefly the particulars of the charge], and that we, the said justices,  
[or *I*, the said magistrate,] thereupon dismissed the said charge. Given under our  
hands [or my hand] this \_\_\_\_\_ day of \_\_\_\_\_.

### FORM OF CONVICTION.

\_\_\_\_\_) *Be it remembered*, that on the \_\_\_\_\_ day of \_\_\_\_\_, in  
to wit. ) the year of our Lord one thousand eight hundred and \_\_\_\_\_, at \_\_\_\_\_,  
in the county of \_\_\_\_\_, [or riding, division, liberty, etc.,  
as the case may be], A. O. is convicted before us, J. P. and Q. R., two of her  
Majesty's justices of the peace for the said county [or riding, etc.], [or me, S. T.,  
a magistrate of the police court of \_\_\_\_\_ as the case may be], for that  
he, the said A. O., did [specify the offence, and the time and place when and  
where the same was committed, as the case may be, but without setting forth  
the evidence], and we, the said J. P. and Q. R., [or *I*, the said S. T.,] adjudge  
the said A. O. for his said offence to be imprisoned in the \_\_\_\_\_ [or to  
be imprisoned in the \_\_\_\_\_ and there kept to hard labour for the space of \_\_\_\_\_]  
[or we [or *I*] adjudge the said A. O. for his said offence to  
forfeit and pay \_\_\_\_\_], [here state the penalty actually imposed],  
and, in default of immediate payment of the said sum, to be imprisoned in the \_\_\_\_\_  
[or to be imprisoned in the \_\_\_\_\_ and there kept to hard  
labour] for the space of \_\_\_\_\_, unless the said sum shall be sooner paid.  
Given under our hands and seals [or my hand and seal] the day and year first  
above mentioned.

## Land Drainage Act.

THE 24 & 25 Vict. c. 133, which was passed for the purpose of amending the law relating to the drainage of land for agricultural purposes, after providing for the assignment of new limits for commissions of sewers (ss. 4-13), the duration of the commission (s. 14), the quorum (s. 15), the general powers of the commissioners (ss. 16-33), liabilities by reason of tenure (ss. 34-37), rating powers (ss. 38, 39), the mortgage of rates (ss. 40, 41), the authentication, effect, and service of notices (ss. 42-46), provides as follows:—

Sect. 47. "Where any order, requisition, or rate has been made by the commissioners, or any act done by them without the presentment of a jury in pursuance of the powers of this Act, any person aggrieved by such order, requisition, or rate, may appeal to the Court of quarter ses-

Appeal to quar-  
ter sessions.

(a) These are given by the 11 & 12 Vict. c. 89.

sions against any such order, requisition, rate, or act, and the Court may confirm, annul, or modify the same accordingly; but no such appeal shall be entertained unless it is made within four months next after the making of such order or requisition, or the making such rate, or the doing of such act, nor unless ten days' notice in writing of such appeal previously to the quarter sessions stating the nature and grounds thereof is served on the commissioners, nor unless the appellant within four days after the service of such notice enter into recognizances with two sufficient sureties before a justice of the peace conditioned duly to prosecute such appeal, and to abide the order of the Court thereon."

Sect. 48. "If at any time after such notice of appeal has been given and such recognizance has been entered into as aforesaid, it appears to the Court of quarter sessions on the application of either party that the matter in question in such appeal consists wholly or in part of matters of mere account, or of engineering or other scientific questions, which cannot be satisfactorily tried by the Court, it shall be lawful for such Court to order that such matters, either wholly or in part, be referred to the arbitration of one or more persons to be appointed by the parties, or in case of disagreement by the Court; and the award made on such arbitration shall be enforceable by the same process as the order of the Court of quarter sessions."

Power to refer  
case to arbitra-  
tion.

Sect. 49. "The provisions of 'The Common Law Procedure Act, 1854,' relating to compulsory references shall be deemed to extend to arbitrations directed by the Court of quarter sessions, and the word 'court' in the said Act shall be deemed to include the Court of quarter sessions."

17 & 18 Vict. c.  
125, incorpo-  
rated.

Sect. 50. "Where any questions are declared by this part of this Act to be determinable, at the option of the owner, by justices or by arbitration, the owner shall be deemed to have declared his assent to the determination thereof by justices, unless he require the commissioners to refer the same to arbitration by notice under his hand served on the commissioners within ten days after he has received notice from them of their intention to have such questions determined; and, where the justices have cognizance of the case, the same proceedings shall be had as are required under 'The Lands Clauses Consolidation Act, 1854' in case of a question of disputed compensation authorized to be settled by two justices; and, where such questions are referred to arbitration, the same proceedings shall be had as required by the said Act where any question of disputed compensation authorized to be settled by arbitration has arisen; subject to this proviso, that the costs of such arbitration shall be in the discretion of the arbitrators."

Decision of ques-  
tions by justices  
or arbitration.

Sect. 51. "All penalties and sums of money directed to be recovered in a summary manner shall be recovered before two justices in manner directed by the Act passed in the session holden in the 11th and 12th years of the reign of her present Majesty, c. 43, intituled, 'An Act to facilitate the Performance of the Duties of Justices of the Peace out of Sessions within England and Wales, with respect to Summary Convictions and Orders,' and of any Act amending the same."

Recovery of  
penalties.

Sect. 52 provides for the payment of the cost of the commissioners out of the rates.

Sect. 53 provides for the tender of amends.

Sect. 54 saves the rights of canal owners and wharfingers.

Sect. 55 provides that the commissioners shall not divert any river so as to injure harbours.

Sect. 56 gives canal commissioners, etc., power to alter sewers.

Sect. 57 preserves exemptions under local Acts.

Sect. 58. "No person shall, without the consent of the commissioners, cause any filthy or unwholesome water, or washings of manufactories or mines, or other foul or poisonous liquid to flow into any watercourse

Penalty for  
draining into  
sewers without  
consent of com-  
missioners.

*Land  
Drainage  
Act.*

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within the jurisdiction of the commissioners of sewers; and any person offending against this enactment shall incur a penalty not exceeding five pounds and a further penalty of forty shillings for every day during which the offence is continued; but this section shall not apply to any person having a legal right to cause such water, washing, or liquid as aforesaid, to flow into any existing watercourse."

Sect. 59 relates to the powers of commissioners of sewage and drainage boards to execute works in the adjoining area.

Sect. 60 makes the powers of the Act cumulative.

Sect. 61 provides that the Act is not to affect contracts between landlord and tenant.

Sect. 62 provides for the alteration of local boundaries.

Part 2 of the Act (ss. 63-71) provides for the constitution of elective drainage districts (ss. 63-65), and the formation and powers of drainage boards (ss. 66-71).

Part 3 (ss. 72-83) confers on private owners powers of procuring outfalls for drainage.

Sects. 72-75 provide for the making of the application for an outfall to the adjoining owner, and the proceedings to be taken in case of his assent thereto.

Dissent of adjoining owner.

Sect. 76. "The adjoining owner shall be deemed to have dissented from the application made to him if he fail to express his assent thereto within one month after the service of the notice of application on him; and in the event of such dissent there shall be decided, by two or more justices in petty sessions assembled, unless the adjoining owner require the same within such period of one month to be decided by arbitration, the questions following, that is to say:—

"1. Whether the proposed drains or improvements in drains will cause any injury to the adjoining owner, or the occupier or other person interested in the lands.

"2. Whether any injury that may be caused is or is not of a nature to admit of being fully compensated for by money.

And the provisions of the first part of this Act relating to the decision of the questions therein mentioned shall apply to the decision of the questions mentioned in this section.

Result of decision.

"The result of any such decision shall be as follows, that is to say:—

"1. If the decision is that no injury will be caused to the adjoining owner, to the occupier, or other parties interested in the lands, the applicant may proceed forthwith to make the proposed drains or improvements in drains.

"2. If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, but that such injury is of a nature to admit of being fully compensated by money, the justices or arbitrators shall proceed to assess such compensation, and to apportion the same amongst the parties in their judgment entitled thereto, and, on payment of the sum so assessed, the applicant may proceed to make the proposed drains or improvements in drains.

"If the decision is that injury will be caused to the adjoining owner, occupier, or other parties interested in the lands, and that such injury is not of a nature to admit of being fully compensated by money, the applicant shall not be entitled to make the proposed drains or improvements in drains."

Sect. 77 provides for the application of the compensation where any owner is under disability, etc.

Duty of justices or arbitrators.

Sect. 78. "The justices or arbitrators, as the case may be, in the event of their approving of a scheme of drainage as proposed by the applicant or as modified by themselves, shall cause a map thereof to be prepared, and shall certify under their hands the correctness of such

map; and it shall be the duty of the applicant to forward the same to the clerk of the peace of the county, riding, or division of the county wherein the land is situate, who shall keep the same in his office as a record of the proceedings between the parties."

Sect. 79 gives power to the applicant to keep the drains clear when made; and, if he neglects to do so, the owner or occupier of the lands in which they are made may clear them and recover the expenses of so doing in a summary manner from the applicant.

Sect. 80 gives power to the owner to divert the drains; and any dispute as to the efficiency of drains so diverted is to be decided by two or more justices assembled in petty sessions.

Sect. 81. "Any person who wilfully obstructs any person making any drains or improvements in drains in pursuance of part 3 of this Act, and any person who wilfully dams up, obstructs, or in any way injures any drains or improvements in drains so opened or made, shall for each offence incur a penalty not exceeding ten pounds, to be recovered in a summary manner."

Penalty for obstructing or injuring drains.

By sect. 82, the costs of the adjoining owner are to be defrayed by the applicant.

Sect. 83 makes provisions for the construction of drains, which will have the effect of changing the natural outfall, and gives any person objecting thereto the rights of an adjoining owner who has dissented.

## **Lands Clauses Consolidation Act.**

THE 8 & 9 Vict. c. 18, consolidates into one Act the provisions usually inserted in Acts authorizing the taking of lands for undertakings of a public nature; and such of the sections as are material for justices to know are here noticed.

Sect. 3 is the interpretation clause, and, among other enactments, contains the following:—

"The word 'justices' shall mean justices of the peace acting for the county, city, liberty, cinque port, or place where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and, where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place, where any part of such lands shall be situate, and who shall not be interested in such matter; and, where any matter shall be authorized or required to be done by two justices, the expression 'two justices' shall be understood to mean two justices assembled and acting together."

"Justices."

"Two justices."

Sect. 9 enacts that the amount of compensation for land taken under the Act shall, in the case of parties under disability, be ascertained by two surveyors to be named by the parties, or, if they cannot agree, by a third surveyor, to be nominated by two justices on the application of either party after notice to the other party (a).

Sect. 17. "A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed, shall be sufficient evidence thereof; and, on the application of the promoters of

A certificate of two justices to be evidence that the capital has been subscribed.

(a) By the 23 & 24 Vict. c. 106, s. 4, the amount of the rent-charge where land may be sold in considera-

tion of an annual rent-charge is to be settled in the manner directed by this section.

*Lands  
Clauses Con-  
solidation  
Act.*

Disputes as to compensation where the amount claimed does not exceed £50, to be settled by two justices.

Method of proceeding for settling disputes as to compensation by justices.

Board of Trade or two justices empowered to appoint an umpire on neglect of the arbitrators.

Compensation to absent parties to be determined by a surveyor appointed by two justices.

Two justices to nominate a surveyor.

Declaration to be made by the surveyor.

the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly."

Sect. 22. "If no agreement be come to between the promoters of the undertaking and the owners of, or parties by this Act enabled to sell and convey or release, any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices."

An order made under this section is within the 11 & 12 Viet. c. 43, s. 1; and the complaint on which it is founded must, therefore, be made within six months after the cause of complaint arose. (*In re Edmundson*, 17 Q. B. 67.) If the order is made without jurisdiction, it may be brought up by *certiorari* and quashed. (*Ib.*)

Sect. 24. "It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special Act, or any Act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons, and upon the appearance of such parties, or in the absence of any of them upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof."

Sect. 28. "If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the Board of Trade, in any case in which a railway company shall be one party to the arbitration, and two justices in any other case, shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special Act, shall be final."

Sect. 58. "The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot after diligent inquiry be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as hereinafter mentioned."

Sect. 59. "Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them, that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof."

The deed appointing the surveyor need not describe the lands which are to be valued. (*Poynder v. The Great Northern Ry. Co.*, 16 Sim. 3.)

Sect. 60. "Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or

one of them, make and subscribe the declaration following at the foot of such nomination (that is to say),—

*I, A. B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me.*

*Made and subscribed in the presence of*

A. B.

And, if any surveyor shall corruptly make such declaration, or having made such declaration shall wilfully act contrary thereto, he shall be guilty of a misdemeanour."

Sect. 63. "In estimating the purchase-money or compensation to be paid by the promoters of the undertaking in any of the cases aforesaid, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken by the promoters of the undertaking but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of this or the special Act, or any Act incorporated therewith."

Purchase-money and compensation, how to be estimated.

Sect. 85. "That if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices (a) in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters, if they be a corporation, or, if they be not a corporation, under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ (b), in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands, until such purchase-money or compensation shall be paid to such party or deposited in the bank for the benefit of the parties interested in such lands under the provisions herein contained; and, upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special Act."

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

Sect. 89. "If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession

Penalty on the promoters of the undertaking en-

(a) By the 30 & 31 Vict. c. 127, s. 36, the surveyor, in the case of railway companies, is to be appointed by the Board of Trade.

(b) The approval of the sureties may be given by the justices upon an *ex parte* application. (*Ex parte Langham*, 1 De G. & S. 486.)



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Act.*

tering upon lands  
without consent  
before payment  
of the purchase-  
money.

of any lands which shall be required to be purchased or permanently used for the purposes of the special Act, without such consent as aforesaid, or without having made such payment for the benefit of the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds, over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and, if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior Courts: provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto."

Decision of jus-  
tices not conclu-  
sive as to the  
right of the pro-  
motors.

Sect. 90. "On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking."

If no committee  
be appointed, the  
amount to be de-  
termined by a  
surveyor.

Sect. 106. "If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found."

Release of part  
of lands from  
charge.

Sect. 116. "If part only of the lands charged with any such rent-service, rent-charge, chief or other rent, payment or encumbrance, be required to be taken for the purposes of the special Act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part; and, if such apportionment (a) be not so settled by agreement the same shall be settled by two justices; but, if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof."

Service of notices  
upon com-  
pany (b).

Sect. 134. "That any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to

(a) A similar provision as to apportionment of rent, where part only of the lands leased is required, is made by ss. 119-121.

(b) This section is applicable to all

cases where a summons or notice is required for any purpose. (*In re South Yorkshire Ry. Co.*, 18 L. J., Q. B. 333.)

the secretary, or in case there be no secretary, the solicitor of the said promoters."

Sect. 136. "Every penalty or forfeiture imposed by this or the special Act, or by any bye-law (a) made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; and, on complaint being made to any justice, he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending, either in person or by leaving the same with some inmate at his usual place of abode; and, upon the appearance of the party complained against, or, in his absence, after proof of the due service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and, upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred as well as such costs attending the conviction as such justices shall think fit."

Sect. 137. "If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress; and such justices or either of them shall issue their or his warrant of distress accordingly."

Sect. 138. "Where in this or the special Act, or any Act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned on demand to the party whose goods shall have been distrained."

Sect. 139. "The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed to be applied in aid of the poor's-rate of such parish; or, if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's-rate of such extra-parochial place, or, if there shall not be any poor's-rate therein, in aid of the poor's-rate of any adjoining parish or district."

Sect. 140. "If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, has been given to such treasurer or left at his residence; and, if such treasurer pay any money under such distress as aforesaid, he may

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Act.*

Penalties to be  
summarily re-  
covered before  
two justices

Penalties to be  
levied by dis-  
tress.

Distress, how to  
be levied.

Application of  
penalties.

Distress against  
the treasurer.

(a) A bye-law by which every passenger on a railway, not producing or delivering up his ticket on leaving the company's premises, was required to pay his fare from the place whence

the train originally started, was held not to be a bye-law imposing a "penalty or forfeiture." (*Chilton v. The London & Croydon Ry. Co.*, 16 M. & W. 212.)

*Lands  
Clauses Con-  
solidation  
Act.*

Distress not un-  
lawful for want  
of form.

retain the amount so paid by him, and all costs and expenses occasioned thereby, out of money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same."

Sect. 141. "No distress levied by virtue of this or the special Act, or any Act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him; but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case."

Penalties to be  
sued for within  
six months.

Sect. 142. "No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special Act, or any Act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence."

Penalty on wit-  
nesses making  
default.

Sect. 143. "It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special Act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and, if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justices, every such person shall forfeit a sum not exceeding five pounds for every such offence."

Form of convic-  
tion.

Sect. 144. "The justices before whom any person shall be convicted of any offence against this or the special Act, or any Act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C.) to this Act annexed."

Proceedings not  
to be quashed for  
want of form.

Sect. 145. "No proceeding in pursuance of this or the special Act, or any Act incorporated therewith, shall be quashed or vacated for want of form; nor shall the same be removed by *certiorari* (a) or otherwise into any of the superior Courts."

Parties allowed  
to appeal to  
quarter sessions  
on giving secu-  
rity.

Sect. 146. "If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special Act, or any Act incorporated therewith, such party may appeal to the general quarter sessions for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the Court thereon."

Court to make  
such order as  
they think rea-  
sonable.

Sect. 147. "At the quarter sessions for which such notice shall be given the Court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such an appeal the Court may, if

(a) The *certiorari* may, however, issue, if the proceeding is not within the jurisdiction given by the Act.

(Reg. v. *S. Wales R. Co.*, 13 Q. B. 988; 13 L. J., Q. B. 310.)

they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable."

Sect. 149. "That any person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury."

1. *Recovering Possession on Desertion by Tenant.*

Persons giving false evidence liable to penalties of perjury.

### SCHEDULE (C.)

#### Form of Conviction.

to wit

Be it remembered, that on the       day of       , in the year of our Lord A. B. is convicted before us C. and D., two of her Majesty's justices of the peace for the county of       [here describe the offence generally and the time and place when and where committed], contrary to the [here name the special Act]. Given under our hands and seals, the day and year first above-written.

C. D.

## Landlord and Tenant.

As to distress for rent, see tit. "*Distress for Rent*," Vol I.

As to removing goods to avoid a distress, see *Ib*.

As to embezzlement by lodgers, see tit. "*Larceny*," post.

Herein of—

1. *The Recovery of Possession of Premises on Tenants deserting them*, p. 191.
2. ————— on *Determination of Tenancy*, p. 194.

### I. The Recovery of Possession of Premises on Tenants Deserting them.

The 11 Geo. 2, c. 19, s. 16, reciting that "landlords are often great sufferers by tenants running away in arrear, and not only suffering the demised premises to lie uncultivated without any distress thereon, whereby their landlords or lessors might be satisfied for the rent-arrear, but also refusing to deliver up the possession of the demised premises, whereby the landlords are put to the expense and delay of recovering in ejectment," enacts, "that, from and after the said 24th day of June, 1738, if any tenant holding any lands, tenements, or hereditaments, at a rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, who shall be in arrear for one year's rent, shall desert the demised premises, and leave the same uncultivated or unoccupied, so as no sufficient distress can be had to countervail the arrears of rent, it shall and may be lawful to and for

Tenants deserting premises, justices may give possession if rent in arrear, etc.

1. *Recovering Possession on Desertion by Tenant.*

two or more justices of the peace of the county, riding, division, or place (having no interest in the demised premises), at the request (a) of the lessor or landlord, lessors or landlords, or his, her, or their bailiff or receiver, to go upon and view the same, and to affix, or cause to be affixed, on the most notorious part of the premises, notice (b) in writing what day (at the distance of fourteen days at least) they will return to take a second view thereof; and, if upon such second view the tenant, or some person on his or her behalf, shall not appear and pay the rent in arrear, or there shall not be sufficient distress upon the premises, then the said justices may put the landlord or landlords, lessor or lessors, into the possession of the said demised premises; and the lease thereof to such tenant, as to any demise therein contained only, shall from thenceforth become void."

Appeal.

Sect. 17. "Such proceedings of the said justices shall be examinable in a summary way by the next justice or justices of assize of the respective counties in which such lands or premises lie; and, if they lie in the city of London or county of Middlesex, by the judges of the courts of King's Bench or Common Pleas; and, if in the counties palatine of Chester, Lancaster, or Durham, then before the judges thereof; [and if in Wales, then before the Courts of grand sessions (c) respectively:] who are hereby respectively empowered to order restitution to be made to such tenant, together with his or her expenses and costs, to be paid by the lessor or landlord, lessors or landlords, if they shall see cause for the same, and, in case they shall affirm the act of the said justices, to award costs not exceeding five pounds for the frivolous appeal."

Provisions extended to half-year's rent in arrear, and although no express right of re-entry is reserved.

The 57 Geo. 3, c. 52, after reciting that it is expedient for the due protection of the interest of landlords that so much of the 11 Geo. 2, c. 19, as requires a tenant to be in arrear for one year's rent should be altered, and that the provisions of the said Act should be extended to tenancies where no right of entry in case of non-payment is reserved to the landlord, enacts, "That the provisions, powers, and remedies by the said recited Act given to lessors and landlords, in case of any tenant deserting the demised premises, and leaving the same uncultivated or unoccupied, so as no sufficient distress can be had to counterveil the arrears of rent, shall be extended to the case of tenants holding any lands, tenements, or hereditaments at a rack-rent, or where the rent reserved shall be full three-fourths of the yearly value of the demised premises, and who shall be in arrear for one half-year's rent (instead of for one year, as in the said recited Act is provided and enacted), and who shall hold such lands and tenements or hereditaments under any demise or agreement, either written or verbal, and although no right or power of re-entry be reserved or given to the landlord in case of non-payment of rent, who shall be in arrear for one half-year's rent, instead of for one year, as in the said recited Act is provided and enacted."

In metropolitan police district.

By the 21 & 22 Vict. c. 73, s. 1, every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district, sitting at a police Court or other place appointed in that behalf, shall have power to do alone any act, and to exercise alone any jurisdiction which, under any law now in force, or under any law not containing an express enactment to the contrary hereafter to be made, may be done or exercised by two justices of the peace; and all the provisions of any Act of Parliament auxiliary to the jurisdiction of such justices shall be applicable also to the jurisdiction of such stipendiary magistrates.

Complaint on oath.

It is not necessary that any information or complaint *on oath* should be made, in order to justify the interference of magistrates under these Acts. (*Basten v. Curew*, 5 D. & R. 558; 3 B. & Cres. 649, S. C.)

(a) See form (1), *post*.  
(b) See form (2), *post*.

(c) The Welsh judicature is now abolished by the 1 Will. 4, c. 70.

Justices ought to make a record of the whole proceedings under these enactments (a). In the case of *Basten v. Carew*, in trespass against two magistrates for giving plaintiff's landlord possession of a farm as a deserted farm, they produced in evidence a record of their proceedings under that Act, which set forth all such circumstances as were necessary to give them jurisdiction, and by which it appeared that they had pursued the directions of the statute, and it was held, that this record was conclusive as an answer to the action. "It is a general rule and principle of law," said *Abbot, C.J.*, in delivering his opinion on this case, "that, where justices of the peace have an authority given to them by an Act of Parliament, and they appear to have acted within the jurisdiction so given, and to have done all that they are required by the Act to do in order to originate their jurisdiction, a conviction, drawn up in due form and remaining in force, is a protection in any action brought against them for the act so done." (See *Basten v. Carew*, 5 D. & R. 558; 3 B. & C. 649, S. C.)

And such a record is equally conclusive as a protection to the landlord and the constable who assisted in getting possession, even although the judges of assize on appeal have made an order for restitution of the farm to the tenant. (*Ashcroft v. Bourne*, 3 B. & Adol. 684; *Reg. v. Sewell*, 8 Q. B. 161.) And see further, tit. "Evidence," Vol. II., as to the record being conclusive.

In the case of *Ex parte Pilton*, (1 B. & Ald. 369), where a tenant ceased to reside on the premises for several months, and left them without any furniture or sufficient other property to answer the year's rent, it was held that the landlord might properly proceed under the 11 Geo. 2, c. 19, s. 16, to recover the possession, although he knew where the tenant then was, and although the justices found a servant of the tenant on the premises when they first went to view the same.

Where, however, the tenant's wife and children remained on the premises, it was held that they were not deserted, although there was no furniture in the house except three or four chairs, which were stated by the wife to belong to a neighbour. (*Ashcroft v. Bourne*, 3 B. & Ad. 684.)

Where the magistrates, from a doubt as to their jurisdiction, declined to give possession, the Court refused to compel them to do so by *mandamus*. (*Ex parte Fulder*, 8 Dowl. 535.)

The judges of assize, on appeal under the 11 Geo. 2, c. 19, s. 17, against an order of two magistrates giving possession to a landlord under s. 16, made an order for restitution of the premises to the tenant. The order of the judges was not directed to any person:—Held, that a writ of *mandamus* could not issue commanding the two justices to make restitution. (*Reg. v. Trail*, 12 Ad. & Ell. 761; 4 Per. & D. 325, S. C.)

The appeal is to the judges going the circuit, in their individual capacity, and not as judges of assize; and, therefore, any order they may make should be signed by the judges themselves, and not by the clerk of assize. (*Reg. v. Sewell*, 8 Q. B. 161.)

# 1. Recovering Possession on Desertion by Tenant.

Record of proceedings.

A protection to justice.

What a deserting, etc.

Appeal and restitution.

— } The information and request of A. B., of —, gentleman, taken this  
to wit. } — day of —, in the year of our Lord 18—, before us, J. P. and  
K. Q., Esqs., two of her Majesty's justices of the peace for the said county  
of —, who saith that one C. D. is tenant of a certain messuage, dwelling-house,  
[lands], tenements, and premises, with the appurtenances, situate at —, under a  
demise thereof by the said A. B. unto the said C. D. for — years, [or from year to  
year], at an annual rack-rent of —; and that the said C. D. is now in arrear  
for — year's rent for the said premises, and hath wholly deserted the same, and

(1.) Information or request on justices to view premises.

(a) See form (3), post, 194.

2. *Recovering Possession on Determination of Tenancy.*

left the same unoccupied, and there is not now upon the said premises any sufficient distress to countervail the said arrears of rent: the said A. B. thereupon requests us the said justices (we having no interest in the said demised premises) to go upon and view the same, and to take such proceedings thereupon in that behalf, according to the statutes in such case made and provided, that he the said A. B. may be put into possession of the said premises.

Taken before us, the justices aforesaid, at —, on the day and year first above mentioned.

(2.) Notice to be affixed on premises.

To C. D., late of } Take notice, that A. B., of —, gentleman, hath this day —, labourer. } stated unto us, J. P. and K. P., Esqs., two of her Majesty's justices of the peace for the county of —, that you, C. D., are tenant to him of — [etc., here insert the substance of the information and request, in past tense and second person, to the words] possession of the said premises; and we, as such justices as aforesaid, being willing to grant unto the said A. B. such remedy as by the statutes in that behalf is provided, have hereupon now come upon the premises aforesaid, and have viewed the same, and we now hereby give you notice that we shall return to the said premises on —, to take a second view thereof; and, if, on such second view, you, or some person on your behalf, do not then appear here and pay the rent aforesaid, and if there shall not then be sufficient distress upon the said premises to countervail the said arrears of rent, we shall put the said A. B. into possession of the said premises, according to the form of the statute in such case made and provided.

Dated at —, this — day of —, A.D. —.

(3.) Record of proceedings.

— } Be it remembered, that on the — day of —, A.D. —, at —, A.B. to wit. } of —, cometh before us, J. P. and K. P., Esqs., two of the justices of our lady the Queen, assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, and informeth us that C. D., of —, is tenant [etc., set forth the information and request, to the words] possession of the said premises: And we, as such justices as aforesaid, being willing to grant unto the said A. B. such remedy as by the statutes in that behalf is provided, do now hereupon come upon the premises aforesaid, and having viewed the same, do now hereupon affix upon the most notorious part of the premises aforesaid, a certain written notice, directed to the said C. D., wherein and whereby we give the said C. D. notice that we shall return to the said premises on —, for the purpose of viewing the same a second time; and that, if, on such second view, the said C. D., or some person on his behalf, do not appear here and pay the rent aforesaid, and if there shall not then be sufficient distress upon the said premises to countervail the said arrears of rent, we shall put the said A. B. into possession of the said premises, according to the form of the statute in such case made and provided. And now, at this day, to wit, on —, in pursuance of the said notice, we, the said justices, having returned to the said premises, do now view the same a second time; but the said C. D. doth not, nor doth any person on his behalf, attend here to pay the said rent, nor is the same as yet paid, nor is there any distress upon the said premises to countervail the said arrears of rent: Wherefore, the said several matters in the information aforesaid being duly proved to us, and we being satisfied of the truth thereof, do hereupon put the said A. B. into possession of the said premises, according to the form of the statute in such case made and provided.

In witness whereof we the said justices have hereunto set our hands and seals, at —, this — day of —, in the year of our Lord —.

## II. Recovery of Possession on Determination of Tenancy.

By the 1 & 2 Vict. c. 74, s. 1, after reciting that "it is expedient to provide for the more speedy and effectual recovery of the possession of premises unlawfully held over after the determination of the tenancy," it is enacted "that from and after the passing of this Act, when and so soon

When tenant or occupier of premises wherethere is no rent, or where the rent

as the term or interest of the tenant of any house, land, or other corporeal hereditaments held by him at will, or for any term not exceeding seven years, either without being liable to the payment of any rent, or at a rent not exceeding the rate of twenty pounds a year, and upon which no fine shall have been reserved or made payable, shall have ended, or shall have been duly determined by a legal notice to quit, or otherwise; and such tenant, or (if such tenant do not actually occupy the premises, or only occupy a part thereof) any person by whom the same or any part thereof shall be then actually occupied, shall neglect or refuse to quit and deliver up possession of the premises, or of such part thereof respectively, it shall be lawful for the landlord of the said premises, or his agent, to cause the person so neglecting or refusing to quit and deliver up possession to be served (in the manner hereinafter mentioned) with a written notice, in the form set forth in the schedule to this Act, signed by the said landlord or his agent, of his intention to proceed to recover possession under the authority and according to the mode prescribed in this Act; and, if the tenant or occupier shall not thereupon appear at the time and place appointed, and show to the satisfaction of the justices hereinafter mentioned reasonable cause why possession should not be given under the provisions of this Act, and shall still neglect or refuse to deliver up possession of the premises, or of such part thereof of which he is then in possession, to the said landlord or his agent, it shall be lawful for such landlord or agent to give to such justices proof of the holding, and of the end or other determination of the tenancy, with the time or manner thereof; and, where the title of the landlord has accrued since the letting of the premises, the right by which he claims the possession; and, upon proof of service of the notice, and of the neglect or refusal of the tenant or occupier, as the case may be, it shall be lawful for the justices acting for the district, division, or place within which the said premises, or any part thereof, shall be situate, in petty sessions assembled, or any two of them, to issue a warrant under their hands and seals to the constables and peace officers of the district, division, or place (a) within which the said premises, or any part thereof, shall be situate, commanding them, within a period to be therein named, not less than twenty-one nor more than thirty clear days from the date of such warrant, to enter (by force, if needful) into the premises, and give possession of the same to such landlord or agent: Provided always, that entry upon any such warrant shall not be made on a *Sunday*, *Good Friday*, or *Christmas Day*, or at any time except between the hours of nine in the morning and four in the afternoon: Provided also, that nothing herein contained shall be deemed to protect any person on whose application and to whom any such warrant shall be granted, from any action which may be brought against him by any such tenant or occupier, for or in respect of such entry and taking possession, where such person had not at the time of granting the same lawful right to the possession of the same premises: Provided also, that nothing herein contained shall affect any rights to which any person may be entitled as out-going tenant by the custom of the country or otherwise."

Sect. 2. "That such notice of application intended to be made under this Act may be served, either personally, or by leaving the same with some person being in and apparently residing at the place of abode of the persons so holding over as aforesaid; and that the person serving the same shall read over the same to the person served, or with whom the same shall be left as aforesaid, and explain the purport and intent thereof: Provided that, if the person so holding over cannot be found, and the place of abode of such person shall either not be known, or admission thereto cannot be obtained for serving such summons, the post-

## 2. *Recovering Possession on Determination of Tenancy.*

does not exceed £20 a year, refuses to give possession, the landlord may give him notice of his intention to proceed to recover possession under the authority of this Act.

If tenant does not appear, or fails to show cause why he does not give possession, the justices may issue warrant directing constables to give landlord possession.

Mode of serving summons.

(a) None but a constable or peace officer of the district, division, or place is justified in executing the warrant. (*Jones v. Chapman*, 14 M. & W. 124.)



2. *Recovering Possession on Determination of Tenancy.*

How execution of warrants of possession may be stayed.

Proceedings on bond in actions of trespass.

Protection of justices, constables, etc.

Where landlord has a lawful title, he shall not be deemed a trespasser by reason of irregularity, but be liable in an action on the case for special damage proceeding from irregularity.

ing up of the said summons on some conspicuous part of the premises so held over shall be deemed to be good service upon such person."

Sect. 3. "That in every case in which the person to whom any such warrant shall be granted had not, at the time of granting the same, lawful right to the possession of the premises, the obtaining of any such warrant as aforesaid shall be deemed a trespass by him against the tenant or occupier of the premises, although no entry shall be made by virtue of the warrant; and in case any such tenant or occupier will become bound with two sureties, as hereinafter provided, to be approved of by the said justices, in such sum as to them shall seem reasonable, regard being had to the value of the premises, and to the probable costs of an action, to sue the person to whom such warrant was granted, with effect and without delay, and to pay all the costs of the proceeding in such action in case a verdict shall pass for the defendant, or the plaintiff shall discontinue or not prosecute his action, or become nonsuit therein, execution of the warrant shall be delayed until judgment shall have been given in such action of trespass; and, if, upon the trial of such action of trespass, a verdict shall pass for the plaintiff, such verdict and judgment thereupon shall supersede the warrant so granted, and the plaintiff shall be entitled to double costs (a) in the said action of trespass."

Sect. 4. "That every such bond as hereinbefore mentioned shall be made to the said landlord or his agent at the costs of such landlord or agent, and shall be approved of and signed by the said justices; and, if the bond so taken be forfeited, or if, upon the trial of the action for securing the trial of which such bond was given, the judge by whom it shall be tried shall not indorse upon the record in Court that the condition of the bond hath been fulfilled, the party to whom the bond shall have been so made may bring an action and recover thereon: Provided always, that the Court where such action as last aforesaid shall be brought may, by a rule of Court, give such relief to the parties upon such bond as may be agreeable to justice; and such rule shall have the nature and effect of a defeazance to such bond."

Sect. 5. "That it shall not be lawful to bring any action or prosecution against the said justices by whom such warrant as aforesaid shall have been issued, or against any constable or peace officer by whom such warrant may be executed, for issuing such warrant or executing the same respectively, by reason that the person on whose application the same shall be granted had not lawful right to the possession of the premises."

Sect. 6. "That, where the landlord, at the time of applying for such warrant as aforesaid, had lawful right to the possession of the premises, or of the part thereof so held over as aforesaid, neither the said landlord, nor his agent, nor any other person acting in his behalf, shall be deemed to be a trespasser by reason merely of any irregularity or informality in the mode of proceeding for obtaining possession under the authority of this Act; but the party aggrieved may, if he think fit, bring an action on the case for such irregularity or informality, in which the damage alleged to be sustained thereby shall be specially laid, and may recover full satisfaction for such special damage, with costs of suit: Provided that, if the special damage so laid be not proved, the defendant shall be entitled to a verdict, and that, if proved, but assessed by the jury at any sum not exceeding five shillings, the plaintiff shall recover no more costs than damages, unless the judge before whom the trial shall have been held shall certify upon the back of the record that, in his opinion, full costs ought to be allowed."

Sect. 7. "That, in construing this Act, the word 'premises' shall be

(a) The right to double costs is taken away by the 5 & 6 Vict. c. 97.

taken to signify lands, houses, or other corporeal hereditaments; and that the word 'person' shall be taken to comprehend a body politic, corporate, or collegiate, as well as an individual; and that every word importing the singular number shall, where necessary to give full effect to the enactments herein contained, be deemed to extend and be applied to several persons or things, as well as one person or thing; and that every word importing the masculine gender shall, where necessary, extend and be applied to a female as well as a male; and that the term 'landlord' shall be understood as signifying the person entitled to the immediate reversion of the premises, or, if the property be held in joint tenancy, coparcenary, or tenancy in common, shall be understood as signifying any one of the persons entitled to such reversion; and that the word 'agent' shall be taken to signify any person usually employed by the landlord in the letting of the premises, or in the collection of the rents thereof, or specially authorized to act in the particular matter by writing under the hand of such landlord."

2. *Recovering Possession on Determination of Tenancy.*

Interpretation clause.

Sect. 8. "That this Act shall not extend to *Scotland or Ireland.*"

Not to extend to Scotland or Ireland.

By the 3 & 4 Vict. c. 77, s. 19, this Act is extended to masters of grammar schools holding over; by the 4 & 5 Vict. c. 38, s. 18, to other schoolmasters; by the 8 & 9 Vict. c. 118, s. 111, to the occupiers of allotments of gardens for the poor; by the 15 & 16 Vict. c. 79, s. 13, to persons having encroached on lands to be enclosed (*Ohlscote v. Youlden*, 29 *L. J., M. C.* 197); by the 22 Vict. c. 12, s. 5, to the occupiers of lands vested in the Secretary of State for the War Department; and by the 23 & 24 Vict. c. 136, s. 13, to schoolmasters or mistresses, or other officers or recipients of the benefit of a charity.

The jurisdiction of the justices is not ousted by the tenant setting up title in a third person, if the tenancy and its legal determination are proved to their satisfaction. (*Rees v. Davis*, 5 *C. B., N. S.* 56.)

In a proceeding to recover possession of a house alleged to belong to a parish under the 59 Geo. 3, c. 12, s. 24, the jurisdiction of the justices is not ousted by a claim of title, as the question of title is necessarily involved in the matter which the justices have to determine. (*Ex parte Vaughan*, *L. R.*, 2 *Q. B.* 114; 36 *L. J., M. C.* 17; 7 *B. & S.* 902.)

For the mode of recovering possession of parish property, see tit. "Poor," Vol. IV.

#### SCHEDULE TO WHICH THE 1 & 2 VICT. c. 74, REFERS.

I — [owner or agent to —, the owner, as the case may be], do hereby give you notice that, unless peaceable possession of the tenement [shortly describing it] situate —, which was held of me [or of the said —, as the case may be], under a tenancy from year to year [or as the case may be], which expired [or was determined] by notice to quit from the said — or otherwise [as the case may be], on the — day of —, and which tenement is now held over and detained from the said —, be given to — [the owner or agent] on or before the expiration of seven clear days from the service of this notice, I, —, shall on — next, the — day of —, at — of the clock of the same day, at —, (a) apply to her Majesty's justices of the peace acting for the district of — [being the district, division, or place in which the said tenement, or any part thereof, is situate], in petty sessions assembled, to issue their warrant, directing the constables of the said district to enter and take possession of the said tenement, and to eject any person therefrom.

Dated this — day of —.

(Signed)

To Mr.

[Owner or Agent.]

(1.) Notice of owner's intention to apply to justices to recover possession.

(a) A notice omitting to state the place at which the application will be

made is bad. (*Delany v. Fox*, 1 *C. B., N. S.* 166; 26 *L. J., C. P.* 5.)

(2.) Complaint before two justices.

*The complaint of — [owner or agent, etc., as the case may be], made before us, two of her Majesty's justices of the peace acting for the district of —, in petty sessions assembled, who saith that the said — did let to — a tenement consisting of —, for —, under the rent of —, and that the said tenancy expired [or was determined by notice to quit, given by the said —, as the case may be] on the — day of —; and that, on the — day of —, the said — did serve on — [the tenant overholding] a notice in writing of his intention to apply to recover possession of the said tenement (a duplicate of which notice is hereto annexed), by giving, etc., [describing the mode in which the service was effected]; and that, notwithstanding the said notice, the said — refused [or neglected] to deliver up possession of the said tenement, and still detains the same.*

*Taken the — day of —, before us* (Signed)  
(Signed)

A duplicate of the notice of intention to apply is to be annexed to this complaint.

(3.) Warrant to peace officers to take and give possession.

*Whereas [set forth the complaint], we, two of her Majesty's justices of the peace, in petty sessions assembled, acting for the — of —, do authorize and command you, on any day within — days from the date hereof [except on Sunday, Christmas Day, and Good Friday, to be added if necessary], between the hours of nine in the forenoon and four in the afternoon, to enter by force, if needful, and with or without the aid of — [the owner or agent, as the case may be], or any other person or persons whom you may think requisite to call to your assistance, into and upon the said tenement, and to eject thereout any person, and of the said tenement full and peaceable possession to deliver to the said — [the owner or agent].*

*Given under our hands and seals, this — day of —.*

*To —, and all other constables and peace officers acting for the district of —.*

## Larceny.

As to child stealing, see tit. "*Children*," Vol. I.; as to inciting children to steal, see *lb.*

Definition of offence.

Larceny is the wrongful taking and carrying away of the personal goods of any one from his possession, with a felonious intent to convert them to the use of the offender, without the consent of the owner (2 *East's P. C.* 553; 2 *Leach*, 838); the word "felonious" showing that there is no colour of right to excuse the act, and the "intent" being to deprive the owner permanently of his property. (*Reg. v. Thurborn*, 1 *Den. C. C.* 388; 18 *L. J., M. C.* 140; *Reg. v. Guernsey*, 1 *F. & F.* 394; *R. v. Holloway*, 18 *L. J., M. C.* 60; 1 *Den. C. C.* 370.)

It is not, however, an essential ingredient of the offence, that the taking should be for a cause of gain (*lucri causâ*); a fraudulent taking, with intent wholly to deprive the owner of his property, or with intent to destroy it, is sufficient, if the object be to effect some supposed advantage, either to the party committing the offence, or to a third person. (*R. v. Cabbage*, *R. & R.* 292; *R. v. Wilkinson*, *Id.* 470; *R. v. Morfit*, *Id.* 307.) But, if a person from idle curiosity, either personal or political, opens a letter addressed to another person, and keeps the letter, this is no larceny, even though a part of his object may be to prevent the letter from reaching its destination. (*Reg. v. Godfrey*, 8 *C. & P.* 563, *per Lord Abinger*.)

Simple or compound.

Larceny is either *simple* (that is, unaccompanied by any other aggra-

vating circumstance), or *compound* (that is, when it is accompanied by the aggravating circumstances of taking from the house or person, or both.)

Larceny was formerly divided into grand larceny and petit larceny ; but this distinction is now abolished, and every larceny, whatever be the value of the property stolen, is of the same nature, and subject to the same incidents, in all respects, as grand larceny ; and every Court, whose jurisdiction was previously limited to petit larceny, has power to try every case of larceny, and all accessaries to such larceny, which is punishable like simple larceny. (24 & 25 Vict. c. 96, s. 2, *post*, p. 226, re-enacting the 7 & 8 Geo. 4, c. 29, s. 2.)

Grand or petit, distinction between, now abolished.

By grand larceny was meant a felonious and fraudulent taking and carrying away, by any person, of the mere personal goods of another, above the value of 12*d.* ; and it was well defined to be the wrongful taking of goods with intent to spoil the owner of them, *causâ lucri*. (1 *Hawk.* c. 33.)

The definition of larceny by the common law, construed with that strictness which the law requires in criminal cases, was found to be too limited in its operation, both with respect to the description of the property taken, as also to the mode of acquiring possession, and was gradually extended to a variety of cases not falling within the precise terms of the definition. These cases, in the course of time, by reason of a more extended commerce and increasing population, had become extended to an inconvenient number, and, being dispersed in many Acts of Parliament, had rendered the knowledge of this branch of the law difficult and uncertain. To remedy this inconvenience statutes were passed consolidating these Acts and extending the protection of the penal laws to other cases of which the ancient law of larceny took no account. And, though these statutes have been since repealed, the same object has been pursued in the 24 & 25 Vict. c. 96, passed for consolidating and amending the statute law of England and Ireland relating to larceny and other similar offences.

The offence of larceny as extended by statute.

The subject of larceny may be divided into the following heads :—

Division of subject.

# I. *Of Larceny at Common Law*, p. 201.

## 1. *The Taking*, p. 201.

*In general*, p. 201.

*Where the Offender has a bare Charge of the Goods*, p. 202.

*Where the Possession of the Goods has been obtained animo furandi*, p. 204.

*Where the Possession of the Goods has been obtained bonâ fide without any fraudulent Intention in the first instance*, p. 209.

*Where the Offender has more than a Special Property, etc.*, p. 212.

## 2. *The Carrying away*, p. 214.

## 3. *The Goods taken*, p. 216.

## 4. *The Owner of the Chattels*, p. 217.

## 5. *Against the Owner's Consent*, p. 218.

## 6. *The Felonious Intent*, p. 219.

**Larceny.****II. Of Larceny extended by Statute, and of Embezzlement and False Pretences, p. 225.**

1. *The Consolidation of the Law by the 24 & 25 Vict. c. 96, p. 225.*
  - (a). *Sect. 1. Interpretation Clause, p. 225.*
  - (b). *Sect. 2. Distinction between Grand and Petty Larceny abolished, p. 226.*
  - (c). *Sect. 3. Larceny by Bailees, p. 227.*
  - (d). *Sect. 4. Punishment for Simple Larceny, p. 228.*
  - (e). *Sects. 5, 6. Indictments for several Takings, p. 228.*
  - (f). *Sects. 7-9. Punishment for Larceny after a previous Conviction, etc., p. 229.*
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**III. The Indictment, p. 299.**

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*Name of Prosecutor and Third Persons, p. 301.*

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## I. Larceny at Common Law.

## 1. The Taking.

Larceny at common law is defined (*ante*, p. 198,) to be the wrongful taking and carrying away of the personal goods of any one from his possession, with a felonious intent to convert them to the use of the offender, without the consent of the owner.

What.

The requisites of the offence are:—

1. *The Taking*, p. 201.
2. *The Carrying away*, p. 214.
3. *The Goods taken*, p. 216.
4. *The Owner of the Goods*, p. 217.
5. *The Owner's Dissent from the Taking*, p. 218.
6. *The felonious Intent in Taking*, p. 219.

## 1. THE TAKING.

*In general.*]—To constitute the crime of larceny, there must be a taking or severance of the thing from the actual or constructive possession of the owner; for all felony includes trespass, and every indictment must have the words *feloniously took* as well as *carried away*; from whence it follows, that, if the party be guilty of no trespass in taking the goods, he cannot be guilty of felony in carrying them away (1 *Hawk.* c. 33, s. 1); as in the case of a wife carrying away and converting to her own use the goods of her husband, for husband and wife are one person in law, and consequently, there can be no taking so as to constitute larceny (1 *Hale*, 514); and the same, if the husband be jointly interested with others in the property so taken. (*R. v. Willis*, 1 *Moo. C. C.* 375.)

Must be an actual taking from the possession of owner.

The taking, however, may be by the hand of another (2 *East's P. C.* 555); as, if the thief procure a child within the age of discretion to steal goods for him, it will be the same as if he had taken them himself; and the taking, in such case, should be charged to him. (1 *Hale*, 507; 1 *Hawk.* c. 33, s. 8.)

The possession of the owner may be either *actual* or *constructive*; that is, he may have the goods in his manual possession, or they may be in the actual possession of another, and at the same time be constructively in the owner's possession; and they may be his property by virtue of some contract, and yet not have been reduced by him into actual possession; in which case his possession is constructive, as by placing them under his servant's care, to be by him managed for him.

Of actual and constructive possession.

But, besides the actual and constructive possession in the owner, who at the same time has the property in him, there is a possession distinct from the actual property, although arising out of an interest in the goods, acquired by contract; as in the case of one who has possession of goods in pledge, or of goods lent, or let. Such an one has a property (as well as possession) concurrent with the absolute property of the real owner, and either defeasible or reducible into an absolute property, according to the terms agreed upon between him and the actual owner.

Either of the above kinds of possession will be sufficient to sustain an indictment of larceny from the absolute owner.

As very nice questions frequently arise, as to what will amount to a sufficient taking, where the owner of the chattels has delivered them to the party accused, or to a third person, we shall proceed to inquire into the subject in the following order, viz. :—

Division of subject.

1. *The Taking.*

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1. *The Taking, where the Owner has delivered the Chattels under a bare Charge*, p. 202.
2. *The Taking, where the Possession of the Goods has been obtained animo furandi*, p. 204.
3. *The Taking, where the Possession of the Goods has been obtained bonâ fide without any fraudulent Intention in the first Instance*, p. 209.
4. *The Taking, where the Offender has more than a special Property in the Goods*, p. 212.

1. The taking where the offender has a bare charge.

1. *The Taking, where the Offender has a bare Charge.*] <sup>11</sup> The books notice cases in which, although the manual custody be out of the owner, and delivered by him to another, yet the possession, absolute as well as constructive, is deemed to remain in him, and the possession of the other to be no more than a bare charge.

Upon this difference between a possession and a charge, Lord Coke says: "There is a diversity between a possession and a charge; for, when I deliver goods to a man, he hath the possession of the goods, and may have an action of trespass if they be taken or stolen out of his possession. But my butler, or cook, that in my house hath charge of my vessels or plate, hath no possession of them, nor shall have an action of trespass as the bailee shall: and therefore, if they steal the plate, etc., it is larceny; and so it is of a shepherd; for these things be *in onere et non in possessione promi, coci, pastoris*," etc.

So, he says, "If a taverner set a piece of plate before a man to drink in it, and he carry it away, etc., it is larceny; for it is no bailment, but a special use to a special purpose."

The servant who keeps a key to my chamber may be guilty of felony in fraudulently taking away the goods therein; for he hath only a bare charge given him.

And, where a person employed to drive cattle, sells them, it is larceny; for he has the custody merely, and not the right to the possession (*R. v. M'Namee*, 1 Moo. C. C. 368); although the intention to convert them were not conceived until after they were delivered to him. (*R. v. Harvey*, 9 C. & P. 353; *Reg. v. Jackson*, 2 Mood. C. C. 32.)

So a carter going away with his master's cart was holden to have been guilty of felony. (*R. v. Robinson*, 2 East's P. C. 565.)

If A. ask B., who is not his servant, to put a letter in the post, telling him that it contains money, and B. break the seal and abstract the money before he puts the letter in the post, he is guilty of larceny. (*R. v. Mary Jones*, 7 C. & P. 151.)

So, if a master deliver property into the hands of a servant for a special purpose, as to leave it at the house of a friend, or to get change, or to deposit it with a banker, the servant will be guilty of felony in applying it to his own use; for it still remains in the constructive possession of its owner. (2 *Leach*, 870; 1 *Leach*, 302.)

So, where a lady asked the prisoner to get a railway ticket for her, and handed him a sovereign to pay for it, which he took intending to steal, and instead of getting the ticket ran away: it was held to be larceny. (*Reg. v. Thompson*, L. & C. 225; 32 L. J., M. C. 53; *post*, 205.)

If a banker's clerk is sent to the money room to bring cash for a particular purpose, and he takes the opportunity of secreting some for his own use (1 *Leach*, 344); or if a tradesman intrust goods to his servant to deliver to his customer, and he appropriates them to himself (*R. v. Bass*, 2 East's P. C. 566; 1 *Leach*, 251; *Vale v. Bayle*, 1 Cowp. 294), the parties are respectively guilty of larceny.

And, if several people play together at cards, and deposit money for that purpose, not parting with their property therein, and one sweep it all away and take it to himself, he will be guilty of larceny, if the jury

find that he acted with a felonious design. (1 *Leach*, 270; *R. v. William*, 6 C. & P. 390; *Cudd*, 295; *post*, 205; and see *R. v. Robson*, R. & R. 413.)

And, if a bag of wheat be delivered to a warehouseman merely for safe custody, and he take all the wheat out of the bag, and dispose of it, it is larceny. (*R. v. Brazier*, R. & R. 337; and see *R. v. Spears*, 2 *East*, P. C. 568; 2 *Leach* 525, S. C.)

And, where a banker's clerk took notes from the till, under colour of a check from a third person, which check he obtained by having entered a fictitious balance in the books in favour of that person, it was held he was guilty of felony; the fraudulent obtaining the check being nothing more than mere machinery to effect his purpose. (*R. v. Hammon*, 4 *Taunt.* 304; *R. & R.* 221; 2 *Leach's C. C.* 1083, S. C.) So an unauthorized gift by the servant of his master's goods is as much a felony as if he sold or pawned them. (*Reg. v. White*, 9 C. & P. 344.)

A., employed as a clerk in the daytime, but not residing in the house, embezzled a bill of exchange, which he received from his master in the usual course of business, with directions to transmit it by the post to a correspondent, and was held guilty of larceny. (*R. v. Paradise*, 2 *East's P. C.* 565; and see *The King v. Mead*, (*Chelmsford Summer Assizes*), 1816; 3 *Chit. C. L.* 917 b, 2nd edit.)

So, if money or a valuable security, as a check drawn by the prosecutor on a banker (*Reg. & Heath*, 2 *Moo. C. C.* 33), be given by a master to his servant to carry to another, and the servant apply it to his own use, he is guilty of larceny. (*R. v. Lavender*, 2 *Russ.* 160.)

So, where B., a clerk to the prosecutors, managed their cash concerns, and took bills to their bankers to discount whenever they wanted cash, and took from his master's desk an accepted bill, placed there by another clerk who had got it accepted by his master's order, and got it discounted, and absconded with the cash; he was held to be guilty of larceny, though it was objected, that, by the course of business, he had a right to get money for the bill, and, therefore, could not be indicted legally for stealing the bill itself. (*Chipchase's case*, 2 *East's P. C.* 567; 2 *Leach*, 699, S. C.)

Where goods have not been actually reduced into the owner's possession, yet, if he has intrusted another to deliver them to his servant, and they are delivered accordingly, and the servant embezzle them, he may be guilty of larceny. (*R. v. Spears*, 2 *East's P. C.* 568; 2 *Leach*, 825, S. C.; *R. v. Abrahams*, 2 *Leach*, 824; 2 *East's P. C.* 569, S. C.; *R. v. Reid*, *Dears. C. C.* 257.)

On the trial of an indictment for larceny as a servant, it appeared that the prisoner lived in the house of the prosecutor, and acted as the nurse to her sick daughter, the prisoner having board and lodging and occasional presents for her services, but no wages. While the prisoner was so residing, the prosecutor's wife gave the prisoner money to pay a coal bill, which money the prisoner kept, and brought back a forged receipt to the coal bill:—Held, that the prisoner was not the servant of the prosecutor, but that this was a larceny of the money. (*Reg. v. Frances Smith*, 1 *Car. & K.* 423.)

These several cases were all founded upon the master having an actual or legal possession, prior to the delivery to the servant. But there are others in which the master has neither *property* nor *possession* in the goods, previously to the receipt of them by his servant from a third person, for the purpose of delivering them to him. And it has been held, that a servant so receiving goods, and then embezzling them, is not guilty of larceny at common law. (2 *East's P. C.* 568.)

Therefore, if a shopman receive money from a customer of his master, and, instead of putting it into the till, secrete it (*R. v. Bull*, 2 *Leach*, 841, *cit.*); or if a banker's clerk receive money at the counter, and, instead of putting it into the proper drawer, purloin it (*R. v. Bazely*, 2 *Leach*, 835); or receive a bond, for the purpose of being deposited in

Where master has neither *property* nor *possession* in the goods.



### 1. The Taking.

the bank, and, instead of depositing it, convert it to his own use (*R. v. Waite*, 1 *Leach*, 28; 2 *East's P. C.* 570): in these cases, it has been holden that the clerk or shopman is not guilty of larceny at common law (a).

So, where the prosecutor gave the prisoner, his servant, a five-pound note to get changed; he got the note changed, and made off with the change; it was held no larceny at common law to steal the change, but an embezzlement, and that the conviction was wrong. (*R. v. Sullens*, cor. 12 *Js.* 1826, *MS. Car. C. L.* 319; 1 *Moo. C. C.*, 129, *S. C.* And see *R. v. Headge*, *R. & R.* 160.)

So, where the prisoner received a cheque from the prosecutor to buy exchequer bills, got them cashed in notes, and embezzled part, it was held that it was no larceny, for that the prosecutor never had possession of the notes but by the hands of the prisoner. (*R. v. Walsh*, *R. & R.* 215.) In such cases the servant or clerk ought to be indicted under the 24 & 25 Vict. c. 96, s. 68.

(2). The taking, where the possession of the goods has been obtained *animo furandi*.

2. *The Taking, where the Possession of the Goods has been obtained animo furandi.*—Where the offender unlawfully acquired the possession of goods, as by fraud or force, etc., with an intent to steal them, the owner still retaining his property in them, such offender will be guilty of larceny in embezzling them. Therefore, hiring a horse on pretence of taking a journey, and immediately selling it, is larceny; because the jury found the defendant acted *animo furandi*, in making the contract; and the parting with the possession merely had not changed the nature of the property. (*R. v. Pear*, 2 *East's P. C.* 685; 1 *Leach*, 212, *S. C.*) And so, where a person hires a post-chaise for an indefinite period, and converts it to his own use, he may be convicted of larceny, if his original intent was felonious. (*R. v. Semple*, 1 *Leach*, 420; 2 *East's P. C.* 691, *S. C.* And see *R. v. Charlewood*, 1 *Leach*, 409; 2 *East's P. C.* 689, *S. C.*)

So, where the prisoner, intending to steal the mail-bags from a post-office, procured them to be let down to him by a string, from the window of the post-office, under pretence that he was the mail guard, he was held guilty of larceny. (*R. v. Pearce*, 2 *East's P. C.* 603.) And it was said in the case of *Reg. v. Atkinson*, that in *Pearce's* case the property did not pass, the postmaster having no property in the mail-bag to part with. (2 *East's P. C.* 673. See *Reg. v. Kay*, 26 *L. J.*, *M. C.* 119; 1 *Dears. & B. C. C.* 231.)

Where the prisoner was hired for the special purpose of driving sheep from one fair to another, and, instead of doing so, drove them, the following morning after he received them, a different road, and sold them; the jury having found, that, at the time he received the sheep, he intended to convert them to his own use, and not drive them to the specified fair, the judges were unanimously of opinion, that he was rightly convicted of larceny. (*R. v. Stock*, 1 *Moo. C. C.* 87. See *R. v. Walsh*, *R. & R.* 215; *R. v. Crump*, 1 *C. & P.* 658.)

Where the defendant offered to give the prosecutor gold for bank notes, and, upon the prosecutor's laying down some bank notes, for the purpose of having them changed for gold, the defendant took them up, and went away with them, promising to return immediately with the gold, but never, in fact, returned, and he was indicted for stealing them; *Wood*, B., left it to the jury to say, whether the defendant had the *animus furandi* at the time he took the notes, and said that, if they were of that opinion, the case clearly amounted to larceny. (*R. v. Oliver*, 4 *Taunt.* 274; 2 *Russ. C. & M.* 122, *S. C.*; cited by *Gurney*, for the prosecution, in the case of *R. v. Walsh*, 4 *Taunt.* 274; 2 *Leach*, 1072; *R. & R.* 215, *S. C.*) And, in the same case, *Wood*, B., said, "that a parting with the property in goods could only be effected by contract, which

(a) But see this offence under stat. 24 & 25 Vict. c. 96, s. 68, *post*, 257.

required the assent of two minds; but that in this case there was not the assent of the mind, either of the prosecutor or of the prisoner; the prosecutor only meaning to part with his notes on the faith of having the gold in return, and the prisoner never meaning to barter, but to steal." (And see *Reg. v. Rodway*, 9 C. & P. 784.)

So, where a lady gave a sovereign to the prisoner, in order that he might obtain for her a railway ticket, and he ran away with the money, and the jury found that the prisoner had placed himself near the pay place for the purpose of being intrusted with money to get tickets and of converting the money to his own use, it was held that he was rightly convicted of larceny. (*R. v. Thompson*, L. & C. 225; 32 L. J., M. C. 53.)

Where the prisoner covered some coals in a cart with slack, and was allowed to take the coals away, the owner believing the load to be slack and not intending to part with his property in the coals, it was held a larceny of the coals. (*R. v. Bramley*, L. & C. 21.)

In another case, where it appeared that the prisoners decoyed the prosecutor into a public-house, and there introduced the play of cutting cards, and that one of them prevailed upon the prosecutor (who did not play on his own account) to cut the cards for him, and then, under pretence that the prosecutor had cut the cards for himself, and had lost, another of them swept his money off the table, and went away with it; it was considered to be one of those cases which should be left to the jury to determine *quo animo* the money was obtained, and which would be felony in case they should find that the money was obtained upon a preconceived plan to steal it. (*R. v. Horner and others*, 1 Leach, 270; Cald. 295.)

Where the defendant agreed to discount a bill for the prosecutor, and the bill was given to him for that purpose; he told the prosecutor, that, if he then sent a person with him to his lodgings, he should give him the amount, deducting the discount and commission; a person was sent accordingly; but, upon reaching the lodgings, the defendant left the messenger there, and went out on pretence of getting the money, but never returned; the judge left it to the jury to say, whether the defendant obtained possession of the bill with intent to steal it, and whether the prosecutor meant to part with his property in the bill, before he should have received the money for it; the jury being of opinion in the affirmative on the first proposition, and in the negative on the second, convicted the prisoner; and the judges afterwards held the conviction to be right. (*R. v. Aickles*, 2 East's P. C. 675; 1 Leach, 294, S. C.)

Where the defendant obtained from a silversmith two cream ewers, that a customer of the silversmith, with whom the defendant said he lived, might select which he liked best, and absconded with them, but the silversmith did not charge for either of the ewers, and did not at the time of the delivery intend to charge for either of them until he had ascertained which would be chosen, this was holden by *Bayley, J.*, to be larceny, because the possession only, and not the right of property, had been parted with (*R. v. Davenport*, M.S. 1. Arch. Peel's Acts, 5); but, if the prisoner had, in fact, been sent by the customer to the silversmith, the possession would have been in the prisoner, and the subsequent conversion would not have been larceny; and upon this ground in a case similarly circumstanced, but in which there was no evidence that the prisoner had not actually been sent for the goods, *Patteson, J.*, directed an acquittal; for, *non constat* that the prisoner had not been sent for the goods as she had stated, and had delivered them to the person who sent her. (*R. v. Savage*, 5 C. & P. 143.)

Prevailing upon a tradesman to bring goods, proposed to be bought, to a given place, under pretence that the price shall then be paid for them, and further prevailing upon him to leave them there in the care of a third person, and then getting them from that person without paying the price, is a felonious taking, if, *ab initio*, the intention was to get

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the goods from the tradesman and not pay for them. (*R. v. Campbell*, 1 *Moo. C. C.* 179.)

In another case, a person, by false pretences, induced a tradesman to send by his servant to a particular house, goods of the value of 2s. 10d., with change for a crown-piece. On the way he met the servant, and induced him to part with the goods and the change for a crown-piece which afterwards was found to be bad. Both the tradesman and servant swore that the latter had no authority to part with the goods or change without receiving the crown-piece in payment, though the former admitted that he intended to sell the goods, and never expected them back again:—It was held, that the offence amounted to larceny. (*Reg. v. Small*, 8 *C. & P.* 46.)

So, taking goods the prisoner has bargained to buy, is felonious, if, by the usage, the price ought to be paid before they are taken, and the owner did not consent to their being taken, and the prisoner, when he bargained for them, did not intend to pay for them, but meant to get them into his possession and dispose of them for his own benefit, without paying for them. (*R. v. Gilbert*, 1 *Moo. C. C.* 185.)

So, getting goods delivered into a hired cart, on the express condition that the price shall be paid for them before they are taken from the cart, and then getting them from the cart without paying the price, will be larceny, if the prisoner never had the intention to pay, but had *ab initio* the intention to defraud. (*R. v. Pratt*, 1 *Moo. C. C.* 250.)

And, where a man ordered a pair of candlesticks from a silversmith, to be paid for on delivery, to be sent to his lodgings, whither they were sent accordingly, with a bill of parcels, by a servant, and the prisoner, contriving to send the servant back under some pretence, kept the goods, it was holden larceny. (*Leach*, 424.)

And, if a sale of goods is not completed, and the pretended purchaser absconds with them, and from the first his intention was to defraud, he is guilty of stealing. (*R. v. Sharpless*, 1 *Leach*, 92.)

Where the owner of goods sends them by a servant, to be delivered to A., and B., pretending to be A., obtains them from him *animo furandi*, B. is guilty of larceny; for the servant has no authority to part with them but to the right person. (*R. v. Wilkins*, 2 *East's P. C.* 673; 1 *Leach*, 520, *S. C.*; *R. v. Longstreeth*, 1 *Moo. C. C.* 137.)

So, where the prosecutor, intending to sell his horse, sent his servant with it to a fair, but the servant had no authority to sell or deal with it in any way, and the defendants, by fraud, induced the servant to part with the possession of the horse, under colour of an exchange for another, intending all the while to steal it; this was holden to be larceny. (*Reg. v. Sheppard*, 9 *C. & P.* 121.)

So, where the prisoner, pretending to be the servant of a person who had bought a chest of tea deposited at the East India Company's warehouse, got a request paper and permit for the chest, and took it away with the assent of a person in the company's service who had the charge of it; it was held that this was felony. (*R. v. Hench*, *R. & R.* 163.)

A. received goods from B. (who was the servant of C.) under colour of a pretended sale:—Held, that the fact of his having received such goods with knowledge that B. had no authority to sell, and that he was in fact defrauding his master, was sufficient evidence to support an indictment for larceny against A. jointly with B. (*Reg. v. Hornby and another*, 1 *Car. & K.* 305.)

If there be a plan to cheat a man of his property under colour of a bet, and he parts with the *possession* only, depositing his money as a stake with one of the confederates, the taking by such confederate is felonious. (*R. v. Robson, Gill, Fewster, and Nicholson*, *R. & R.* 413.)

Where the prisoner went into a shop and asked for change for half-a-crown, and the shopman gave him two shillings and sixpence, and the prisoner held out the half-crown, and the shopman just took hold of it by

the edge, but never actually got it into his custody, and the prisoner ran away with the change and the half-crown; upon an indictment for stealing the two shillings and sixpence, *Park, J.*, held it to be larceny, but doubted whether an indictment would lie for stealing the half-crown. (*R. v. Williams*, 6 C. & P. 390.)

Two men went into a shop and purchased goods, and gave a florin to the shopkeeper, who put it into the till, and put upon the counter one shilling, one sixpence, and five pence for change. The prisoner took up the change, when the other man said it was not wanted and threw down a penny. The prisoner then put down one sixpence and six pence in copper, and asked the shopkeeper for a shilling. She put down a shilling on the counter. The prisoner then said she might as well give him a florin and take it all. She took the florin from the till and put it on the counter, expecting that she would receive two shillings of the prisoner's money in return for the florin. The prisoner took up the florin, and the shopkeeper was in the act of putting the money left on the counter into the drawer when she saw she had got only the value of one shilling in the prisoner's money; but at that moment her attention was distracted by the other man, and before she could speak both men had left the shop. It was held that the transaction was inchoate only, and that the shopkeeper had not intended finally to part with her property in the florin until she had received full value for it; and that therefore the prisoner had been rightly convicted of larceny. (*Reg. v. McKale*, 37 L. J., M. C. 97.)

So, where the delivery is by way of pledge or security, the property in the thing pledged remains in the owner, and, therefore, larceny may be committed of it, if such delivery were obtained fraudulently and with intent to steal. Pretending to find a jewel, in which the prosecutor as present at the time was to share, and inducing him to take charge of it, and to deposit with the finder his watch, etc., until the latter should redeem the jewel, by paying a certain sum of money, and this done with intent to steal the watch, etc., was held larceny. (*R. v. Patch*, 2 East's P. C. 678; 1 Leach, 238, S. C.)

On the other hand, if the owner give his property voluntarily, whatever false pretence be used to obtain it, no felony can be committed. (1 Hale, P. C. 506; *R. v. Adams*, R. & R. 225, S. P.)

Thus, where, in a case of ring-dropping, the prisoners prevailed on the prosecutor to buy the share of the other party, and the prosecutor was prevailed on to part with his money, intending to part with it for ever, and not with the possession of it only, *Coleridge, J.*, held that this was not a larceny. (*Reg. v. Wilson*, 8 C. & P. 111.)

It was the duty of the prisoner to ascertain the amount of certain dock dues payable by the prosecutors, and, having received the money from their cash-keeper, to pay the dues to those who were entitled to them. He falsely represented a larger sum to be due than was due, and, paying over the real amount, converted the difference to his own use. This was held not to be a larceny. (*R. v. Thompson*, L. & C. 233; 32 L. J., M. C. 57.)

So, where the prisoner was sent by his fellow-workmen to get their wages, and received the money from the employer done up in separate pieces of paper, and converted the money to his own use, it was held, upon an indictment laying the property in the employer, that the prisoner could not be convicted, he being the agent of the workmen. (*R. v. Barnes*, L. R., 1 C. C. R. 45; 35 L. J., M. C. 204.)

And, if credit be given for the property, for ever so short a time, no felony can be committed in converting it. (2 East's P. C. 677, 678.)

Thus, obtaining the delivery of a horse sold, on promise to return immediately and pay for it, and riding off and not returning, is no felony. (*R. v. Harvey*, 1 Leach 467; 2 East's P. C. 669.)

So, where the prisoner, with a fraudulent intent to obtain goods,

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Must not be with the assent of the owner.

If credit given, no larceny.

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ordered a tradesman to send him a piece of silk, to be paid for on delivery, and, upon the silk being sent accordingly, gave the servant who brought it bills which were mere fabrications, and of no value: it was holden not to be larceny, on the ground that the servant *parted with the property* by accepting such payment as was offered, though his master did not intend to give the prisoner credit. (*Parke's case, Old Bailey, January, 1794, 2 Leach, 614; 2 East's P. C. 671; 2 Russ. C. & M. 25, S. C.*)

So, where the prisoner ascertained that P. had ordered a hat of B., and he sent a lad to B.'s for it in P.'s name, and obtained it, he was indicted for stealing it. It was objected, that he should have been indicted for obtaining it by false pretences; and the judges, on a case reserved, held, that the indictment was bad as to the first count, which stated it to be B.'s, because B. had parted with the ownership; and, as to the second, which stated it to be P.'s, because P. had never had possession. (*R. v. Adams, R. & R. 225; 2 Russ. C. & M. 28, S. C.*)

So, writing a letter in the name of a third person, to borrow money, which he obtains by that fraud, is only a misdemeanour. (*R. v. Atkinson, 2 East's P. C. 673.*) And, where the defendant, in the presence of the prosecutor, picked up a purse containing a watch-chain and two seals, which the defendant and his confederate represented to be gold, and worth £18, and the prosecutor purchased the defendant's share for £7, intending to part with the property in the money as well as the possession of it, *Coleridge, J.*, held, that this was not larceny. (*Reg. v. Wilson, 8 C. & P. 111.*)

It makes no difference in these cases, that the credit was obtained by fraudulently using another's name, to whom, in truth, the credit was intended to be given, if the delivery of the goods were made by the owner, or any other having the disposing power for that purpose. (*2 East's P. C. 672.*) Thus, the prisoner went to a tradesman's house, and said she came from a Mrs. Cook, a neighbour, who would be much obliged if he would let her have half a guinea's worth of silver, and that she would send the half-guinea presently. The prisoner obtained the silver and never returned; and this was holden no felony. This was, in truth, a *loan* of the silver, upon the faith that the amount would be repaid at another time. It was money obtained on a false pretence. And the same determination has been made in similar cases at the Old Bailey. (*Coleman's case, Old Bailey, June, 1785; 2 East's P. C. 672; 2 Russ. C. & M. 297.*)

If a pawnbroker's servant, who has a general authority from his master to act in his business, delivers up a pledge to the pawner, on receiving a parcel from the pawner which he supposes contains valuables he has just seen in the pawner's possession in a similar parcel, the receipt of the pledges by the pawner is not larceny; for the master parted with the property and ownership in the pledge, and not merely with the possession. (*R. v. Jackson, 1 Moo. C. C. 119; and Car. C. L. 281, S. C. by the name of R. v. Malheim.*)

So, if a tradesman sell goods to a stranger as for ready money, and send them to him by a servant who delivers them, and takes in payment for them bills which prove to be mere fabrications, this will be no larceny, though the party took his lodgings for the express purpose of obtaining the goods by fraud, because the owner parted with his property. (*2 Leach, 614.*)

The prisoner having entered into a contract with the prosecutors for the purchase of some tallow, obtained the delivery orders from the prosecutors, by paying over to them a cheque for the price of the tallow, and, when the cheque was presented, there were no assets. Held not to be a larceny of the delivery orders by a trick, but a lawful possession of them by reason of the credit given to the prisoner in respect of the cheque. (*Reg. v. North, 8 Cox, 433.*)

So, fraudulently winning money at gaming, where the injured party

really intended to pay, is no larceny, though a conspiracy to defraud appear in evidence. (*R. v. Nicholson*, 2 *East's P. C.* 669; 2 *Leach*, 610, *S. C.*)

So, brokers, bankers, or agents, embezzling securities deposited with them for security, or any special purpose, are not guilty of larceny at common law. (*R. v. Walsh*, 4 *Taunt.* 258; 2 *Leach*, 1054; *R. & R.* 215, *S. C.*)

As to this now, see the 24 & 25 Vict. c. 96, ss. 75, 76, 77.

In cases where it is doubtful whether the offender is guilty of larceny or fraud in obtaining goods by false pretences, it is safest to indict him for the latter; for, by the 24 & 25 Vict. c. 96, s. 88, if the proof amount to larceny, the prisoner may still be convicted of the misdemeanour. See the section, *post*.

In all the above cases, the *original* intent of the defendant in obtaining the chattels was *felonious*; and, if it be not so, there is no larceny. Lord *Coke* draws a distinction between such as gain possession *animo furandi*, and such as do not. He says, "The intent to steal must be when it comes to his hands or possession; for, if he hath the possession of it once lawfully, though he hath the *animus furandi* afterwards, and carrieth it away, it is no larceny." (3 *Inst.* 47, 107.) Therefore, where a house was burning, and a neighbour took some of the goods to save them, but afterwards converted them to his own use, it was held no felony. (1 *Leach*, 411. And see *R. v. Banks*, *R. & R.* 441.)

If the original intent be wrongful, though not a felonious trespass, a subsequent felonious appropriation is larceny. (*R. v. Riley*, 22 *L. J., M. C.* 48.)

It is peculiarly the province of the jury to determine with what intent any act is done; and, therefore, though in general he who has a possession of anything on delivery by the owner cannot commit felony thereof; yet that must be understood, first, where the possession is absolutely changed by the delivery, which has before been considered; and, next, which is the present object of inquiry, where such possession is not obtained by fraud, and with a felonious intent. For, if, under all the circumstances of the case, it be found that a party has taken goods from the owner, though by his delivery, with an intent to steal them, such taking amounts to felony. (2 *East's P. C.* 685.)

Overtures were made by a person to the servant of a publican to induce him to join in robbing his master's till. The servant communicated the matter to the master; and, some weeks after, the servant, by the direction of the master, opened a communication with the person who had made the overtures, in consequence of which he came to the master's premises. The master having previously marked some money, it was, by his direction, placed upon the counter by the servant, in order that it might be taken up by the party who had come for the purpose. It was so taken up by him:—Held, larceny in such party. (*Reg. v. Williams*, 1 *C. & K.* 195.)

3. *The Taking, where the Possession of the Goods has been obtained bonâ fide without any Fraudulent Intention in the First Instance.*—If the party obtained possession of the goods lawfully, as upon a trust for, or on account of, the owner, by which he acquires a special property therein, he cannot at common law be afterwards guilty of felony in converting them to his own use, unless by some new and distinct act of taking, as, by severing part of the goods from the rest, with intent to convert them to his own use, he thereby determines the privity of the bailment and the special property thereby conferred upon him. (1 *Hawk.* c. 33, s. 1; 2 *East's P. C.* 554; 1 *Hale*, 504) (*a*).

### 1. The Taking.

Must be an original felonious design.

Felonious intent, question for a jury.

(3.) The taking, where the possession of the goods has been obtained *bonâ fide* without any fraudulent intention in the first instance.

(a) Mr. Collyer, in his collection of statutes, observes, "This latter posi-

tion has been disputed; and much stress has been laid upon the unrea-

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Now, however, by the 24 & 25 Vict. c. 96, s. 3, it is enacted that whoever, being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own use or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof upon an indictment for larceny. As, however, there is a provision that this section shall not extend to any offence punishable on summary conviction, and it is, moreover, doubtful whether it applies to implied bailments, it is still necessary to consider the old law.

Thus, where the defendant saved some of the prosecutor's goods from a fire which happened in his house, and took them home to her own lodgings, but the next morning she concealed them, and denied having them in her possession: the jury finding that she took them originally merely from a desire of saving them for, and returning them to, the prosecutor, and that she had no evil intention until afterwards; the judges held, that it was a mere breach of trust, and not a felony. (*R. v. Leigh, 2 East, P. C. 694.*)

So, where a letter, directed to J. M., St. Martin's Lane, Birmingham, inclosing a bill of exchange drawn in favour of J. M., was delivered to the defendant, whose name was J. M., and who resided near St. Martin's Lane, Birmingham; but, in truth, the letter was intended for a person of the name of J. M., who resided in New Hall Street; and the prisoner, who, from the contents of the letter, must have known that it was not intended for him, applied the bill of exchange to his own use; the judges held, that it was no larceny; because, at the time when the letter was delivered to him, the defendant had not the *animus furandi*. (*R. v. Mucklow, 1 Moo. C. C. 160.*)

If A. lend B. a horse, and he ride away with him, or if I send goods by a carrier, and he carry them away, or if any other bailee convert the goods bailed to his own use, it is not larceny at common law; because the original taking was *bonâ fide*, and without fraud. (1 *Hale*, 504; 1 *Hawk.* c. 33, s. 2.)

So, if A. *bonâ fide* hire a horse for a particular purpose, and, after that purpose is accomplished, sell the horse, it is no larceny at common law; for, unless he had an original felonious intention, the subsequent with-

sonableness of making a man guilty of a felony for stealing part of that of which, if he had taken all, he would be only guilty of a misdemeanour: but a man is equally guilty of felony in taking the whole as in taking a part, when he has done any act to determine the privacy of contract. (See *Bracier's case*, ante, 203.) The cause of the distinction is to be found in the necessity of an accurate distinction between a breach of trust and an act of felony; and the principle is, that felony cannot be committed by a person having a legal possession of goods; as, for instance, under a contract. (See *Charlewood's case*, *Leach*, 456, *supra*.) The contract must be put an end to, before felony can be committed; for, during its existence, the person having possession under it has, *primâ facie*, a legal possession; therefore, although by selling the goods without breaking, he, in fact, destroys the privacy of contract, still that act is executed in respect of goods which are at the time in his

legal possession, the termination of the contract and the act of conversion being contemporaneous; there is not, therefore, a caption and asportation of the goods of another, which is essential to the offence of larceny. And, upon this principle, *R. v. Madox* (*R. & R. 92, supra*) was decided. The prisoner was master and owner of a ship, and stole some of the goods delivered to him to carry. It was held not larceny, because he did not take them out of their packages. But, if the package of goods be first broken, the contract is determined by that act; the legal possession of the carrier is at an end; and, although the actual possession is still in him, the property reverts in the owner, and any subsequent act of conversion is strictly an act committed upon the goods of another, and the larceny is complete. It may be observed, that, in the latter case, the offence is the same, whether committed upon the whole or upon part.

holding or disposing of the horse does not constitute a new felonious taking. (*R. v. Banks*, *R. & R.* 441, overruling *R. v. Tunnard*, 2 *East*, *P. C.* 687.)

So, if A. deliver to B. a watch to be repaired, and B. sell it, it is not larceny at common law, because it was delivered voluntarily, and not obtained *animo furandi*. (*R. v. Leary*, 4 *C. & P.* 241; *R. v. Thristle*, 19 *L. J.*, *M. C.* 66.)

If a weaver who has received silk to work, and a miller who has corn to grind, take out *part* thereof, with intent to steal it, it is felony. (1 *Hawk. c.* 33, s. 56.) Another case is that of the carrier; and it is laid down in the books, that, if, while his contract is in the course of completing, he open the pack and take out a part of the goods, he commits a larceny; but, if he run away with the whole, it is a breach of trust, and no larceny at common law. So, of a tun of wine. But, if, after arriving at the place where he should deliver his charge, he steal a part, or the whole, it is larceny. (1 *Hale*, 504; *Staundf.* 25 a.)

If the master and owner of a ship steal some of the goods delivered to him to carry, it is not larceny at common law, unless he took the goods out of their package. (*R. v. Madox*, *R. & R.* 92. See *Id.* 118.) So, where a parcel was delivered to a porter, and he ran away with it, and in the pursuit it was lost, it was left to the jury to say whether he opened it and took out the goods, or preserved it entire. (2 *East's P. C.* 697.)

A drover of cattle was employed by a grazier in the country to drive eight oxen to London, and his instructions were that, if he could sell them on the road, he might, and those he did not sell on the road he was to take to a particular salesman in Smithfield market, who was to sell them for the grazier. The drover sold two on the road, and, instead of taking the remaining six to the salesman, drove them himself to Smithfield market, and sold them there, and received the money, which he applied to his own use. *Littledale* and *Parke* held, that he could not be convicted either of larceny at common law or embezzlement. (*R. v. Goodbody*, 8 *C. & P.* 665.)

Where the prosecutor sent forty bags of wheat to the prisoner, a warehousman, for safe custody, until they should be sold by the prosecutor, and the prisoner's servant, by direction of the prisoner, emptied four of the bags, and mixed their contents with other inferior wheat, and part of the mixture was disposed of by the prisoner, and the remainder was placed in the prosecutor's bags, which had thus been emptied, and there was no severing of any part of the wheat in any one bag, with intent to embezzle that part only which was so severed, it was held that the prisoner was guilty of larceny in taking the wheat out of the bag. (*R. v. Brazier*, *R. & R.* 337; *ante*, 203. And see *R. v. Madox*, *R. & R.* 92.)

So, where A., the owner of a boat, was employed by B., the captain of a ship, to carry a number of staves ashore in his boat, and B.'s men were put in the boat, but were under the control of A., who did not deliver all the staves, but carried one to the house of his mother, it was held by *Patteson, J.*, that this amounted to a bailment to A., so as to excuse him of the larceny if he had not delivered any of the staves, but that the separation of one stave with intent to convert it to his own use was a breaking of bulk, and so amounted to larceny. (*R. v. Howell*, 8 *C. & P.* 325.) So, where a person, not being the servant of the prosecutor, received from him a parcel containing notes to take to a coach-office, and on the way he abstracted the notes, and applied them to his own use, he was holden guilty of larceny. (*Reg. v. Jenkins*, 9 *C. & P.* 38.)

If he who is employed to carry goods for hire appropriate them to his own use without breaking bulk, it is no larceny at common law, even though he be not a common carrier, but be employed in the particular instance only. (*R. v. Fletcher*, 4 *C. & P.* 545; *R. v. Pratley*, 5 *C. & P.* 533.)

But, where property, which the prosecutors had bought, was weighed



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out in the presence of their clerk, and delivered to their carter's servant to cart, who let other persons take away the cart and dispose of the property for his benefit, jointly with that of the other persons, it was held, that the carter's servant was guilty of larceny at common law. (*R. v. Harding, R. & R. 125.* And see 2 *East's P. C.* 568-574, 695-698.)

Where the bailment has been determined according to the intention of the parties, as if a carrier take the whole package to the place appointed, and deliver them or lay them down, if he afterwards take them, he will be guilty of larceny, because all special property in the goods is ended. (1 *Hale, P. C.* 504; 3 *Inst.* 107.)

A., a bailee of B.'s mare, took her to a livery stable, and paid B. a balance due to him, and B. ordered the stable-keeper not to let A. have the mare again. A. subsequently obtained her by a false story, and sold her. It was held that there was evidence that, after the bailment was ended, a change of possession had taken place, and that the stable-keeper had become B.'s agent, and that A. was rightly convicted of larceny. (*R. v. Stear, 18 L. J., M. C.* 30.)

Where the prisoner was entrusted with a parcel of clothes, and was to sell each article at a price fixed by his employer, and to bring back the money and any unsold clothes, and he pawned some and afterwards fraudulently appropriated the residue, it was held that there was but one bailment, which was determined by the unlawful pawning, and that the subsequent appropriation was larceny. (*R. v. Pryser, 20 L. J., M. C.* 386.)

As to how far a man may be guilty of stealing his own goods in the hands of a bailee, see *post*, 213.

(4.) The taking, where the offender has more than a special property in the goods.

4. *The Taking, where the Defendant has more than a special Property in the Goods.*—A man cannot, in general, be guilty of larceny in stealing his own goods. Upon this principle, one joint tenant or tenant in common of a personal chattel cannot commit larceny of it (1 *Hale, P. C.* 513), unless where the property is in the sole charge of one of the parties. (See *Reg. v. Webster, post.*)

And a prisoner was acquitted of larceny, upon its appearing that he could not otherwise get the goods than by delivery of them by the owner's wife. (*Harrison's case, Leach, 47*; 2 *East's P. C.* 559.)

But, in another case, it was held that, if a man and the owner's wife jointly take away the husband's goods, it may be larceny in the man, though he was acting jointly with the wife. (*R. v. Tolfree, 1 Moo. C. C.* 243. But see *R. v. Clark, 1 Moo. C. C.* 376, n.) There is such a unity of interest between husband and wife, that ordinarily the wife cannot steal the goods of the husband, nor can an indifferent person steal the goods of the husband by the delivery of the wife; and, if the wife deliver the goods of the husband to an indifferent person, for that person to convert them to his own use, this is no larceny; but, if the person to whom the goods are delivered by the wife be an adulterer, it is otherwise; and an adulterer can be properly convicted of stealing the husband's goods, though they be delivered to him by the wife. (*Reg. v. Tollett, 1 Cor. & M.* 112, *Coleridge.*) And in the same case it was held that, on the ground that if a wife elope with an adulterer who takes her clothes with them, the taking is a larceny, it is as much a larceny to steal her clothes, which are her husband's property, as it would be to steal anything else that is his property. (*Ib.* But see *Reg. v. Fitch, post*, 213.) So, if, on the trial of a man for larceny, the jury are satisfied that he took any of the prosecutor's goods, there then being a criminal intention, or there having been a criminal act between the prisoner and the prosecutor's wife, the jury ought to convict, even though the goods were delivered to the prisoner by the prosecutor's wife; but, if the jury should think that the prisoner took away the goods merely to get the wife away from her husband, as a friend only, and without any reference to any

connection between the prisoner and the wife, either actual or intended, they ought to acquit. (*Ib.*)

But in a more recent case, the prisoner agreed with the wife of a man that she should leave her husband and live in adultery with him; he then left the house, the husband leaving next, and the wife then went after the prisoner. They were followed and found in company together on the road, and the prisoner was carrying a handbox containing wearing apparel of the woman: and it was held that a conviction could not be supported on an indictment charging the prisoner with stealing the wearing apparel, laying it as the property of the husband. (*Reg. v. Fitch*, 26 *L. J.*, *M. C.* 169.)

And an adulterer cannot be convicted of stealing the goods of the husband brought by the wife alone to his lodgings, and placed by her in the room in which the adultery is afterwards committed, merely upon evidence of their being found there; but it seems it would be otherwise, if the goods could be traced in any way to his personal possession. (*Reg. v. Rosenberg*, 1 *C. & Kirw.* 233; *per Lord Denman*, C.J., and *Parke*, B.)

Where the prisoner, watching his opportunity when the prosecutor was absent, took away prosecutor's wife, and several boxes containing property of the prosecutor, and the prisoner and the wife were found living together in adultery, and the property was all in their lodgings, it was held that the prisoner was indictable for stealing the property of the prosecutor, because he took the property under such circumstances that the assent of the husband to the taking could not be presumed. (*Reg. v. Berry*, 28 *L. J.*, *M. C.* 70.)

If a servant carries off his master's box by direction of his master's wife and takes it away with her, intending to carry on an adulterous intercourse, the servant may be indicted for stealing the box. (*Reg. v. Mutters*, 34 *L. J.*, *M. C.* 54.)

Under certain circumstances, indeed, a man may commit felony of his own goods; as, if A. bail goods to B., and afterwards, *animo furandi*, steal the goods from B., with design to charge him for the value of them, this is felony. (*Staunf.* 26; 1 *Hale*, 513; 2 *East's P. C.* 558.)

A man stealing his own goods.

So, where A., having delivered money to his servant to carry to a certain place, disguised himself and robbed the servant on the road, with intent to charge the hundred, this was held robbery in A. (2 *East's P. C.* 558.)

If a man steal his own goods from his own bailee, though he has no intent to charge the bailee, but his intent is to defraud the King, yet, if the bailee had an interest in the possession, and could have withheld it from the owner, the taking is a larceny. (*R. v. Wilkinson*, *R. & R.* 470.) And, if a part owner of property steal it from the person in whose custody it is, and who is *responsible for its safety*, he is guilty of larceny. (*R. v. Bramley*, *R. & R.* 478.)

H. was sole manager of the business of an industrial society of which he was a partner, and was responsible for all moneys coming into his possession. He was likewise in possession of the shop. The prisoner was also a partner. The prisoner fraudulently took money from the till. Held that the prisoner might be convicted of stealing the money on an indictment laying the property in H. alone. (*Reg. v. Webster*, 31 *L. J.*, *M. C.* 17; 1 *Leigh & Cave*, 77. See also *Reg. v. Burgess*, 32 *L. J.*, *M. C.* 185; 1 *Leigh & Cave*, 299.)

A wife may be guilty of larceny by stealing the goods of a stranger; but not, as we have seen, *ante*, 212, by stealing her husband's goods from his own possession; because in law they are considered but as one person, and she has a kind of interest in his goods. On which account, not even a stranger can commit larceny of such, by the delivery of the wife, although he knew they were the husband's goods (1 *Hawk. c.* 33, s. 32; 2 *East's P. C.* 558), unless he take them after adultery, or

2. *The Carrying Away.*

unless the goods are taken with the intent that the wife shall elope and live in adultery with the stranger. (*Reg. v. Tollett*, 1 C. & M. 112; and see *ante*, 212, 213.)

But a wife may steal the goods of her husband which have been bailed or delivered to another person; for the latter has a temporary special property in them. (1 *Hale*, 513.) The wife cannot commit larceny in the company of her husband; for it is deemed his coercion, and not her own voluntary act. Yet, if she do it in his absence, and by his mere command, she is then punishable as if she were sole. (1 *Hale*, 45; *Staunf.* 26; *R. v. Morris*, R. & R. 270; *R. v. Robson*, L. & C. 93.) If a woman insist that she is the wife of the man in whose company the felony was committed, she may be indicted by her husband's name and her own, with an *alias* and the addition of spinster; and it will lie upon her to prove her coverture; and, if she fail in doing so, she may be found guilty. (2 *East's P. C.* 559.)

## 2. THE CARRYING AWAY.

There must be a carrying away.

Least removal from the spot is sufficient.

To constitute larceny, there must be a *carrying away*, as well as a taking. The least removing of the thing taken from the place where it was before is sufficient for this purpose, though it be not quite carried off. And upon this ground, the guest, who, having taken off the sheets from his bed, with an intent to steal them, carried them into the hall, and was apprehended before he could get out of the house, was adjudged guilty of larceny. So also was he who, having taken a horse in a close, with an intent to steal him, was apprehended before he could get him out of the close. And such was the case of him who, intending to steal plate, took it out of the trunk wherein it was, and laid it on the floor, but was surprised before he could remove it any further. (1 *Hawk. c.* 33, s. 28; 2 *East's P. C.* 555.) Or if a servant, *animo furandi*, take his master's hay from his stable, and put it into his master's waggon. (*Reg. v. Gruncell*, 9 C. & P. 365.)

H. C. was indicted for stealing a quantity of currants, which were packed in the fore part of a waggon. The prisoner had laid hold of this parcel of currants, and had got near the tail of the waggon with them, when he was apprehended; the parcel was afterwards found near the middle of the waggon. On this case being referred to the twelve judges, they were unanimously of opinion, that, as the prisoner had removed the property from the spot where it was originally placed, with intent to steal, it was a *taking and carrying away*. (*Coslett's case* (Old Bailey, Feb. 1782), 1 *Leach*, 236; 2 *East's P. C.* 556, S. C.)

So, if the prisoner, intending to steal a cask of wine, remove it from the head to the tail of the waggon in which it is placed, and be detected before he can effect his purpose of carrying it off, it is a sufficient asportation to constitute larceny. (*R. v. Walsh*, 1 *Moo. C. C.* 14.)

And the same, where the defendant drew a book from the inside pocket of the prosecutor's coat about an inch above the top of the pocket; but, whilst the book was still about the person of the prosecutor, the latter suddenly put up his hand, upon which the defendant let the book drop, and it fell into the prosecutor's pocket. (*R. v. Thompson*, 1 *Moo. C. C.* 78.)

So, where the prisoner, sitting on the box of a coach, lifted a bag from the bottom of the boot, on which it rested, and, before he could draw the bag from the boot, he was interrupted, it was held a sufficient asportation. (*R. v. Walsh, supra.*) To snatch a diamond from a lady's ear, which is instantly dropped among the curls of her hair, is larceny. (*R. v. Lapiet*, 1 *Leach*, 320; 2 *East's P. C.* 557.)

Mere change of position not sufficient.

On the other hand, a mere change of *position* of the goods will not suffice to make out a carrying away. Where W. C. was indicted (*Ox-*

*ford. Lent Assizes, 1781, and Easter Term, 1781*) for stealing a wrapper and some pieces of linen cloth, and it appeared that the linen was packed up in the wrapper in the common form of a long square, which was laid length-way in a waggon, and that the prisoner set up the wrapper on one end in the waggon for the greater convenience of taking the linen out, and cut the wrapper all the way down for that purpose, but was apprehended before he had taken anything; all the judges agreed, that this was no larceny, although his intention to steal was manifest. For a carrying away, in order to constitute felony, must be a removal of the goods from the place where they were; and the felon must, for the instant at least, have the entire and absolute possession of them. (*R. v. Cherry, 2 East's P. C. 556.*)

So, where one had his keys tied to the strings of his purse in his pocket, which E. W. attempted to take from him, and was detected with the purse in her hand; but the strings of the purse still hung to the owner's pocket by means of the keys; this was ruled to be no asportation: the purse could not be said to be carried away, for it still remained fastened to the place where it was before. (*Wilkinson's case, 1 Hale, 508; 2 East's P. C. 556; 1 Leach, 321, n., S. C.*)

So, in another case, where A. had his purse tied to his girdle, and B. attempted to rob him; in the struggle the girdle broke, and the purse fell to the ground: B. not having previously taken hold of it, or picked it up afterwards, it was ruled to be no taking. (*1 Hale, 533.*)

Upon an indictment for robbery, the prisoner was found to have stopped the prosecutor as he was carrying a feather bed on his shoulders, and told him to lay it down or he would shoot him; on which the prosecutor laid the bed on the ground; but the prisoner was apprehended before he could take it up so as to remove it from the spot where it lay: the judges were of opinion that the offence was not complete. (*Farrell's case, 1 Leach, 322 n.; 2 East's P. C. 557, S. C.; 2 Russ. C. & M. 63.*)

Where the prisoner, by means of a pipe and stopcock, turned off the gas belonging to a company before it came into the meter, and so consumed the gas, it was held that there was a sufficient severance of the gas in the entrance pipe to constitute an *asportavit*. (*Reg. v. White, 1 Dears. & B. C. C. 203.*)

Where a letter-carrier did not deliver a letter sorted to him for delivery, nor return it in his pouch with the other undelivered letters upon his return to the office, as it was his duty to do, but kept it in his pocket, the jury found he had detained the letter with intent to steal it, and it was held that there was a sufficient taking. (*R. v. Poynton, L. & C. 247.*)

If the thief *once take possession of the thing*, the offence is complete, though he afterwards return it. As if a robber, finding little in a purse which he had taken from the owner, restore it to him again, or let it fall in struggling, and never take it up again, having once had possession of it. (*1 Hale, 533; 3 Inst. 69; 2 East's P. C. 557.*) Or, as in *Peat's case*, where the thief, who had robbed Mr. D. of his purse, returned it again, saying, if you value your purse take it back again, and give me the contents; but, before Mr. D. could do this, his servant secured the robber: it was ruled, the offence was complete by the first taking. (*Peat's case, 2 East's P. C. 557; and see Lapier's case, ante, 214.*)

## 2. The Carrying Away.

Offence complete, though defendant afterwards return the thing.

Where it is one continuing transaction, though there be several distinct asportations in law by several persons, yet all may be indicted as principals who concur in the felony before the final carrying away of the goods from the virtual custody of the owner (*2 East's P. C. 557*); and, if several persons act in concert to steal a man's goods, and he is induced by fraud to trust one of them, in the presence of the others, with the possession of the goods, and another of them entice him away, that the man who has his goods may carry them off, all are guilty of

Where distinct asportations by several.

3. *The Goods Taken.* felony: the receipt by one is a felonious taking by all. (*R. v. Standley and another, R. & R. 305.*) And, where property, which the prosecutors had bought, was weighed out in the presence of their clerk, and delivered to their carter's servant to cart, who let other persons take away the cart and dispose of the property for his benefit jointly with that of the other persons, it was held, that the carter's servant, as well as the other persons, were guilty of larceny at common law. (*R. v. Harding, R. & R. 125.*)

### 3. THE GOODS TAKEN.

**At common law, the property must be personal, and of value.** The property taken must, to constitute larceny at common law, be *personal* property, and of some *intrinsic value*, though it need not be of the value of some coin known to the law. (*Reg. v. Morris, 9 Car. & P. 349.*) It is not necessary now to state the value or price in the indictment where it is not of the essence of the offence. See the 14 & 15 Vict. c. 100, s. 24, *post*.

**Chattels real.** Therefore, things real, or which savour of the realty, cannot be the subject of larceny at common law; and so strict was the rule in this respect, that a larceny could not be committed even of title deeds (1 *Hale*, 510; 1 *Hawk. c. 33, s. 35*; *R. v. Westbeer, 2 Stra. 1137*); or any other charter or right concerning the realty (*R. v. Westbeer, 1 Leach, 12*; *R. v. Walker, 1 Moo. C. C. 155*); or even of the box in which they were kept. (1 *Hale*, 510; 3 *Inst. 109.*) Lands, tenements, and hereditaments (either corporeal or incorporeal), cannot in their nature be taken and carried away. And the same rule applies to things that adhere to the freehold, as corn, grass, trees, or the like. (4 *Bla. Com. 232.*) It is always a felony at common law, if the owner or a stranger *sever* the chattels from the freehold, and the thief afterwards come and steal them; or, if the thief sever them at one time, and *afterwards*, at *another* time, come and steal them. (3 *Inst. 109*; 1 *Hale*, 510.)

**The goods must be the subject of property.** The goods, to constitute larceny at common law, must be the subject of property; therefore it is not felony at common law to steal a dead corpse; but it is a high misdemeanour to dissect a body to dissect it, or to sell it for gain. See tit. "*Bodies, Dead*," Vol. I. As to waifs, treasure trove, and wreck, see *post*, 218.

**The goods must be of some value.** Also the goods, to constitute a larceny at common law, must be of some worth in themselves, and not derive their whole value from the relation they bear to some other thing, which cannot be stolen; as paper or parchment, on which are written assurances concerning lands, or obligations, or covenants, or other securities for a debt or other chose in action. (1 *Hawk. c. 33, s. 35.*) But stealing rolls of parchment will be larceny according to the value of the parchment, though they are the records of a Court of justice, unless they concern the realty. (*R. v. Walker, 1 Moo. C. C. 155.*)

**Choses in action.** Deeds, bonds, bills, notes, securities, etc., being mere choses in action, and other choses in action, are not the subject of larceny at common law; for they are of no intrinsic value. (1 *Hawk. c. 33, s. 35.*)

**Domestic animals, birds, etc.** Domestic animals of intrinsic value, as horses, oxen, sheep, and the like, may be the subjects of larceny at common law. Domestic birds also, of intrinsic value, as ducks, hens, geese, turkeys, peacocks, etc., may be the subjects of larceny at common law; so may their eggs, or young ones. (1 *Hale*, 511; 1 *Hawk. c. 33, s. 43.*)

**Produce of.** It being felony to steal the animals themselves, it is also felony to steal the product of any of them, though taken from the living animals. Thus, milking cows at pasture, and stealing the milk, was holden to be felony by all the judges, on a case reserved by Serjeant *Leigh*, who sat

for Mr. J. Bathurst on the Oxford Circuit about 1769. (2 *East's P. C.* 617.) 4. *The Owner.*

So, pulling wool from the backs of sheep is felony. But in this and in the former instance it must be understood that the fact is done fraudulently and feloniously, and not merely for wantonness of frolic; which must be collected from concurrent circumstances, such as the quantity taken, the use to which it is applied, the behaviour of the party, etc. (*R. v. Martin*, 2 *East's P. C.* 618; 1 *Leach*, 171, *S. C.*)

But larceny cannot be committed of such animals in which there is no property, as of beasts that are *feræ naturæ* and unreclaimed; such as deer, hares, and conies in a forest, chase, or warren; fish in an open river or pond; old pigeons out of the house; or wild fowls at their natural liberty; or rooks (see *Hannam v. Mockett*, 2 *B. & Cres.* 934; 4 *D. & R.* 518, *S. C.*); although any person may have an exclusive right, *ratione loci aut privilegii*, to take them, if he can, in those places.

Animals *feræ naturæ*.

But, if they be dead, reclaimed and known to be so, or confined, and may serve for food, it is otherwise, even at common law. For of deer so inclosed in a park, which may be taken at pleasure; fish in a trunk or net, or, as it should seem, in any other inclosed place which is private property, and where they may be taken at the pleasure of the owner at any time; pheasants or partridges in a mew; young pigeons, or old ones when shut up; young hawks in a nest, and even old ones, or falcons, reclaimed and known by the party to be so; larceny may be committed. The same as to peacocks; so of swans marked and pinioned, or swans unmarked, if tame, kept in a mote, pond, or private river; but, if they range out of the royalty, it is no felony to take them, though marked, because it cannot be known that they belong to any person. (*R. v. Rough*, 2 *East's P. C.* 607; 3 *Inst.* 109, 110; 4 *Bla. Com.* 235, 236; 1 *Hale*, 510, 511; 1 *Hawk. c.* 33, s. 36; *Hal. Sum.* 67, 68.)

J. R. being convicted on an indictment for stealing a pheasant, value 40s., of the goods and chattels of H. S., all the judges on a second conference in Easter Term, 1779, after much debate and difference of opinion, agreed that the conviction was bad; for, in cases of larceny of animals *feræ naturæ*, the indictment must show that they were either dead, tame, or confined; otherwise they must be presumed to be in their original state; and that it is not sufficient to add, "of the goods and chattels of such a one." (*R. v. Rough*, 2 *East's P. C.* 607.)

Nor can larceny be committed of the eggs of animals *feræ naturæ*. (*Ib.*)

A stock of bees may, it seems, be the subject of larceny. (*Tibbs v. Smith*, *T. Raym.*)

But there are some animals, which, though they may be reclaimed, yet are considered of so base a nature that no larceny can be committed of them; such as bears, foxes, monkeys, cats, ferrets, and the like, which are kept for whim and pleasure. (1 *Hale*, 512; 4 *Bla. Com.* 235.) And the same rule applied to dogs, unless, perhaps, those which the law recognizes as valuable, such as a mastiff, hound, spaniel, and tumbler. (*Wright v. Ramscot*, 1 *Saund.* 83.)

Animals of a base nature.

In *R. v. Searing* (*R. & R.* 350), it was held that ferrets, though tame and saleable, cannot be the subject of larceny. But now as to the various kinds of property which may be the subjects of larceny, see the 24 & 25 *Vict. c.* 96, ss. 10-39, *post*.

#### 4. THE OWNER.

The goods taken, to constitute larceny, must be the property of another person, and not of the party taking them. Therefore a joint tenant or wife cannot be guilty of larceny in taking away the goods of the co-tenant or husband. This rule has been already noticed, *ante*, 212.

The owner.

As to how far a man may steal his own goods, see *ante*, 213.

As to how far bailees are liable, see *ante*, 209.

5. *Against  
Owner's Con-  
sent.*

Though the owner be unknown, provided there be a property, it is larceny to steal it; and the indictment will lie for stealing the goods of a person unknown. (1 *Hale*, 512; see *post*, § III.) As to stealing a shroud, see "*Bodies, Dead*," Vol. I.)

And see further, as to who may be considered as the owner, and the mode of describing him in the indictment, *post*, § III.

Stealing from the  
thief.

If one stealeth another man's goods, and afterwards another stealeth the same from him, the owner may charge the first or second felon at his choice. (*Dalt. c. 162.*)

Stealing  
pheasants from  
an unqualified  
person.

T. J. was indicted for stealing five pheasants restrained of their natural liberty, the property of A. Fountain. It appeared on the evidence, that Fountain was an alehouse-keeper, and not a qualified person to keep or to shoot game; and that he bred these pheasants for sale. And it was objected, on behalf of the prisoner, that F., not being a qualified person, could have no property in the pheasants, nor any legal possession sufficient to support the indictment; that by the several statutes relating to the game laws, unqualified persons were forbidden, under certain penalties, to have pheasants in their possession; and that, by one of those statutes, authority was given to a justice of the peace to *take away* from such person any pheasant he might have in his possession. But *Grose, J.*, held, that it was sufficiently legal possession for the purposes of the indictment; and the prisoner was convicted. (*Buckingham Lent Assizes, 1809, R. v. Jones, cor. Grose, J. MS. (K).* But see 8 *C. & P.* 642.)

Alien.

An alien, whose sovereign is in amity with the Crown of England, residing here, and receiving the protection of the law, oweth a local allegiance to the Crown during the time of his residence; and, if, during that time, he committeth an offence, he shall be liable to be punished for the same, even as a natural born subject. For his person and personal estate are as much under the protection of the law as the natural-born subject's; and, if he is injured in either, he hath the same remedy at law for such injury. (*Fost. 185.*)

So also an alien, whose sovereign is at enmity with us, living here under the Queen's protection, committing offences, may be proceeded against in like manner; for he oweth a temporary local allegiance, founded on that share of protection he receiveth. (*Fost. 185.* See tit. "*Aliens*," Vol. I.)

Waifs, wreck,  
etc.

It is generally said, that larceny cannot be committed of that wherein none have any determinate property, as of treasure-trove, waifs, etc., till seized. The same was said of wreck; but now the legislature has, by the 24 & 25 Vict. c. 96, ss. 64, 65, 66, *post*, protected the owners of property in this state. And indeed there seems to be some incorrectness in the generality of the position with respect to the other things mentioned. As to waifs, treasure-trove, etc., the lord has no determinate property in them, till seizure; but the true owner, though unknown, who has lost or been robbed of the things themselves, has still a property in them. (1 *Hawk. c. 33, s. 38*; 1 *Hale*, 510; 2 *East's P. C.* 606.)

Where, indeed, the circumstances of the case furnish a presumption of an intended dereliction of such property on the part of the owner, there no larceny can be committed before seizure by the lord, because the taking is not *invito domino*. See tit. "*Estray*," Vol. II. See further, as to stealing property found, *post*, 221.

### 5. AGAINST OWNER'S CONSENT.

The taking must  
be against the  
owner's will.

The taking must be against the will of the owner.

The primary inquiry to be made is, whether the taking were *invito domino*, i. e. without the will or approbation of the owner; for this is of the very essence of larceny and its kindred offence, robbery. And

therefore, where one S. conspired with M'D. and other persons to procure two others, ignorant of the design, to rob him on the highway, in order to procure to themselves the reward given by Act of Parliament for apprehending robbers on the highway; and he accordingly went, in pursuance of such agreement, to the place appointed, where the supposed robbery was effected; the case was holden not to amount to felony. (*R. v. M'Daniel and others, Old Bailey, 1755, Fost. 121; 2 East's P. C. 665, S. C.*)

Yet, in another case, one N., having been informed that one of the early stage-coaches had been frequently robbed near the town by a single highwayman, resolved to use his endeavours to apprehend him; for which purpose he put a little money and a pistol into his pocket, and attended the coach in a post-chaise, till the highwayman approached the carriages, and, presenting a weapon, demanded the money of the passengers. N. gave him his money; and then, jumping out of the chaise, with his pistol in his hand, with the assistance of some others, took the highwayman. This was ruled clearly to be robbery; and the felon was convicted. For this case differed widely from the former; there was no previous concert with the highwayman, directly or through the medium of others, that the robbery should be effected, or anything to lessen the danger of the attempt. (*Norden's case, Old Bailey, 1754; Fost. 129; 2 East's P. C. 666.*)

Where a servant, being solicited to become an accomplice in robbing his master's house, informed his master of it, and the master thereupon told him to carry on the affair, consented to his opening the door leading to the premises, and to his being with the robbers during the robbery, and also marked his property, and laid it in a place where the robbers were expected to come; it was holden, that this conduct of the master was no defence to an indictment against the robbers. (*R. v. Egginton, 2 B. & P. 508; 2 East's P. C. 666; 2 Leach, 913.*)

If the goods be taken with the consent or privity of the wife, no larceny will be committed. (1 *Leach, 47. See ante, 212.*)

#### 6. THE FELONIOUS INTENT.

The taking and carrying away must, to constitute larceny, be with a *felonious intent* entertained at the time of the taking.

There must be a felonious intent.

Felony is always accompanied with an evil intention, and, therefore, shall not be imputed to a mere mistake or misanimadversion; as, where persons break open a door in order to execute a warrant which will not justify such a proceeding; for in such case there is no *felonious intention*. (1 *Hawk. c. 25, s. 3.*)

The mind maketh a felony.

For it is the mind that makes the taking of another's goods to be felony, or a bare trespass only; but, because the variety of circumstances is so great, and the complication thereof so mingled, that it is impossible to prescribe all the circumstances evidencing a felonious intent or the contrary, the same must be left to the due and attentive consideration of the judge and jury; wherein the best rule is, in doubtful matters, rather to incline to acquittal than conviction. Only, in general, it may be observed, that the ordinary discovery of a felonious intent is, the party doing it secretly, or, being charged with the goods, denying it. (1 *Hale, 509; ante, 209; post, 224.*)

And, if goods be taken on claim of right or property in them, it will be no felony; at the same time, it is matter of evidence whether they were *bonâ fide* so taken, or whether they were not taken from the person actually possessing them, with a thievish and felonious intent. And, therefore, obtaining possession of goods by a fraudulent claim of right, or by a fraudulent pretence of law, and then running away with them, would be a felony. (1 *Hale, 507; 1 Hawk. c. 33, s. 15; Farr's case, Kel. 43.*)

Claim of right.



6. *The Felonious Intent.*

In a recent case the prisoner had set wires, in which game was caught. The prosecutor, a game-keeper, took them away, for the use of the lord of the manor, while the prisoner was absent. The prisoner demanded his wires and game, with menaces, and, under the influence of fear, the prosecutor gave them up. The jury found that the prisoner acted under a *bonâ fide* impression that the game and wires were his property, and that he merely, by some degree of violence, gained possession of what he considered his own. It was held no robbery, there being no *animus furandi*. (*R. v. Hall*, 3 C. & P. 409.)

If a man take a letter, supposing it belongs to himself, and, on finding it does not, appropriates to himself any property it contains, this will not amount to larceny, there being no *animus furandi* when he first received the letter. (*R. v. Mucklow*, 1 Moo. C. C. 160; and see *Reg. v. Godfrey*, 8 C. & P. 563; *ante*, 210.)

## Trespass.

And it may be that the taking is no more than a trespass. As, where a man takes another's goods openly before him, or before other persons, otherwise than by apparent robbery; or, having possessed himself of them, avows the fact before he is questioned. (1 *Hale*, 509; 2 *East's P. C.* 661.)

The prisoners enter another's stable at night, and take out his horses, and ride them thirty-two miles, and leave them at an inn, and are afterwards found pursuing their journey on foot. On a finding by the jury that the prisoners took the horses merely with intent to ride, and afterwards leave them, and not to return or make any further use of them, it was held trespass and not larceny. (*R. v. Philips & Strong*, 2 *East's P. C.* 662.) So, where a person stole certain articles, and also took a horse, not with an intent to steal it, but only to get off more conveniently with the other property, this was held not to be a stealing of the horse. (*R. v. Crump*, 1 C. & P. 658.)

Where the prosecutor met the prisoner, whom he knew to be a poacher, and seized him, and the prisoner, being rescued, seized the gun of the prosecutor, and ran away with it, and subsequently was heard to say that he would sell it, and the gun was never afterwards heard of, *Vaughan*, B., upon an indictment for stealing the gun, told the jury that it would not be a felony if the prisoner took the gun under an impression at the time that it might be used so as to endanger his life, and not with an intention of disposing of it, although he afterwards might have determined to dispose of it; and the jury, being of opinion that he had no intention of disposing of the gun at the time he took it, acquitted the prisoner. (*R. v. Holloway*, 5 C. & P. 524.)

Clandestinely taking away articles, to induce the owner (a girl) to fetch them, and thereby to give the prisoner an opportunity to solicit her to commit fornication with him, is not felonious. (*R. v. Dickenson*, R. & R. 420.)

It depends also on circumstances what offence it is to force a man in the possession of goods to sell them; if the defendant takes them, and throws down more than their value, it will be evidence that it was only trespass; if less were offered, it would probably be regarded as felony. (*Burrows v. Wright*, 1 *East's Rep.* 615, 616.)

And it seems that the taking may be only a trespass, where the original assault was felonious. Thus, if a man searches the pockets of another for money, and finds none, and afterwards throws the saddle from his horse on the ground, and scatters bread from his packages, he will not be guilty of robbery (2 *East's P. C.* 662); though he might certainly have been indicted for feloniously assaulting with intent to steal, for that offence was complete.

A taking by mere accident, or in joke, or mistaking another's property for one's own, is neither legally nor morally a crime. (1 *Hale*, 507, 509.)

Mixing goods  
with others.

It is said by Lord *Hale*, if one man take another man's corn or hay,

and mingle it with his own heap or cock, or take another man's cloth, and embroider it with silk or gold, such other person may re-take the whole heap of corn, or cock of hay, or garment and embroidery also; and this re-taking is no felony, nor so much as a trespass. (1 Hale, 513.)

If a person drop any chattel, and another find it, and take it away with the intention of appropriating it to his own use, and only restore it because a reward is offered, he is guilty of larceny. Finding.

The only cases in which a party finding a chattel of another can be justified in appropriating it to his own use, are, where the owner cannot be found, or where it may be fairly said that the owner has abandoned it.

If a person find the chattel of another, and do not immediately bring it to the owner, in the hope that, by bringing it on the next day, he may receive a present for so doing: whether this is a larceny—*quære?* (Reg. v. Peters, 1 Car. & Kirw. 245; per Rolfe, B.)

Where a boy found a cheque which had been lost, and the prisoner got it from him and kept it, in hopes of getting a reward; but, the owner not offering a sufficiently large reward, he refused to deliver it either to the owner or to the boy: held, that the prisoner was not guilty of larceny. (Reg. v. Gardner, 32 L. J., M. C. 35.)

It is laid down, that, if a party lose his goods, and another find them, though he convert them, *animo furandi*, to his own use, yet it is no larceny, for the first taking was lawful. (3 Inst. 108; 1 Hawk. c. 33, s. 2; 2 Russ. 100.)

But, where a servant, indicted for stealing bank-notes, the property of her master, in his dwelling-house, set up as her defence that she found them in the passage, and, not knowing to whom they belonged, kept them to see if they were advertised, Parke, J., held, that she ought to have inquired of her master whether they were his or not; and that, not having done so, but having taken them away from the house, she was guilty of stealing them. (Reg. v. Kerr, 8 C. & P. 177.)

On an indictment for stealing a £10 note, the jury found that the prosecutor had dropped the note in the prisoner's shop; that the prisoner had found it there; that the prisoner, at the time he picked it up, did not know, nor had he reasonable means of knowing, who the owner was; that he afterwards acquired knowledge of who the owner was, and after that he converted the note to his own use; that the prisoner intended, when he picked up the note, to take it to his own use, and to deprive the owner of it, whoever that owner might be; and that the prisoner believed, at the time he picked up the note, that the owner could be found. It was held that the prisoner was guilty of larceny. (Reg. v. Moore, 30 L. J., M. C. 77.)

Where a purchaser left his purse by mistake on the prisoner's market stall, it was held that the purse was not lost property, although the prisoner did not know whose it was; and that, therefore, the further question, whether the prisoner made proper endeavours to find the owner, did not arise. (Reg. v. West, 24 L. J., M. C. 4.)

Although a person finding property, the ownership of which has not been abandoned, may not convert it to his own use, at any rate, not without some endeavour to discover the owner, and although ignorance of the law will excuse none, yet, where an ignorant person found a £5 note, and appropriated it, the Court directed the jury to consider the state of the finder's mind, and ruled that, if the jury thought the person really believed the note to be her own by right of finding, the jury should not bring in a verdict of guilty on an indictment for a larceny of the note. (Reg. v. Reed, 1 Cur. & M. 306.)

A. picked up the purse of B., which contained money, on a turnpike-road, along which B. had previously travelled by coach; A. converted the purse and its contents to his own use:—Held, no larceny, and that A. was liable civilly, but not criminally. If there had been any mark on

6. *The Felonious Intent.*

the purse by which the owner could have been known, it would have been otherwise. (*Reg. v. W. Mole*, 1 *Cur. & K.* 417; *Reg. v. Christopher*, 28 *L. J., M. C.* 35.)

Where a person on whom stolen property is found, gives to those who find him in possession of it a reasonable account of how he came by it, it is incumbent on the prosecutor, on the trial, to show that that account is untrue. *Aliter*, if that account be unreasonable or improbable on the face of it. Where a piece of wood, which had been stolen, had been found by a constable in the possession of the prisoner five days after it was lost, who said that he had bought it of N., who lived about two miles off, it was held, that it was incumbent on the prosecutor to negative this explanation. (*Reg. v. Crowhurst*, 1 *Car. & K.* 370. See also *R. v. Smith*, 2 *C. & K.* 207; and *R. v. Harmer*, 2 *Cox, C. C.* 487.)

Where, however, a prisoner was convicted of stealing some articles of dress, and it was shown that he was in possession of the property recently after it had been stolen; that he sold it openly in a public-house, and, on his arrest, stated to the constable that C. and D. brought the things to his house, and that W., who was at his house, would say that that was true; and C., D., and W., were persons known to the constable, and might have been produced as witnesses, but were not called, it was held, that the conviction was good, and that it was not incumbent upon the prosecution to call the persons to disprove the prisoner's statement. (*R. v. Wilson*, 26 *L. J., M. C.* 45.) But the decision of the Court turned on whether the whole evidence in the case was sufficient to justify the conviction; and it is apprehended that the account given by the prisoner must be of such a character as to rebut the case for the prosecution; and that, where the other facts in the case are such as to show that the account given by the prisoner is presumably false, it will not be necessary for the prosecution any further to disprove the prisoner's statement.

It is laid down that, if A. finds the purse of B. in the highway, and takes it and carries it away, and hath all the circumstances that may prove it to be done *animo furandi*, as denying it or secreting it, yet it is not felony. (1 *Hale*, 506.)

But it is observed by Mr. *Russell*, that the doctrine of a taking by finding must be admitted with great limitation, and must be understood to apply only where the finder really believes the goods to have been lost by the owner, and does not colour a felonious taking under such a pretence. (2 *Russ. C. & M.* 100; 1 *Hale*, 506.)

It will not avail, therefore, that a man's goods be in a place in which ordinarily and lawfully they are or may be placed, if a person take them *animo furandi*. (1 *Hale*, 506.)

But, even if the place where the goods are found is not one in which ordinarily they would be deposited, circumstances may show the taking to have been felonious. (1 *Hale*, 506.)

Thus, where a man hid a purse of money in his corn-mow, and his servant, finding it, took part; if, by circumstances, it can appear he knew his master laid it there, it is felony; but then the circumstances must be pregnant, otherwise it may be reasonably interpreted to be a bare finding, because the purse was deposited in so unusual a place. (2 *East's P. C.* 664; 2 *Hale*, 507.)

But, where a gentleman left a trunk in a hackney-coach, and the coachman took and converted it to his own use, it was held felony; for he must have known where he took up the gentleman and his trunk, and where he set him down; and, therefore, he ought to have restored it to him. (*R. v. Lambe*, 2 *East's P. C.* 664; 2 *Russ. C. & M.* 101; and *R. v. Wynne*, 1 *Leach*, 413; 2 *East's P. C.* 664, *S. C.*)

See a curious case of conversion, with a felonious intent, of a large sum of money found in a bureau which had been delivered to a carpenter for the purpose of being repaired, and where he was considered guilty of larceny. (8 *Ves.* 405; 2 *Leach*, 952.)

But, where a person purchased at an auction a bureau, in which he

afterwards discovered, in a secret drawer, a purse of money, which he appropriated to his own use; it was held, that if he had express notice that the bureau only, and not its contents, if any, was sold to him, or if he had no reason to believe that anything more than the bureau itself was sold, the abstraction of the money was a felonious taking, and he was guilty of larceny; but that, if he had reasonable ground for believing that he bought the bureau with its contents, if any, he had a colourable right to the property, and it was no larceny. (*Merry v. Green*, 7 M. & W. 623.)

In every case in which there is any mark upon the property by which the owner may be traced, and the finder, instead of restoring the property, converts it to his own use, such conversion will amount to larceny. (*R. v. James*, 2 Russ. 102; *R. v. Jones*, *Id.* And see *Reg. v. Preston*, 2 Den. C. C. 353.)

If a man's horse be upon a common where he has a right to put him, and another take the horse with intent to steal it, it is no finding, but a felony. (1 *Hale*, 506.) So, also, if the horse stray into a neighbour's ground or common, it is felony in him that so takes him. (*Id.* 2 *East's P. C.* 664.)

If A.'s sheep stray into B.'s flock, and B. drives it along with his flock, and by bare mistake shears it, this taking is not a felony; but, if he knew it to be another's, and marks it with his mark, this is an evidence of felony. (1 *Hale*, 507.) See further, as to waifs, etc., *ante*, 218.

But, nevertheless, doing it openly and avowedly doth not excuse from felony. As, where a man came to Smithfield market to sell a horse, and a jockey coming thither to buy a horse, the owner delivered his horse to the jockey to ride up and down the market to try his paces; but, instead of that, the jockey rode away with the horse: this was adjudged felony. (*Kel.* 82.) So, where a person came into a sempstress's shop, and cheapened goods, and ran away with the goods out of the shop, openly, in her sight, this was adjudged to be felony. (*Chiser's case*, T. *Raym.* 276.) So, where a man comes into a house, by colour of a writ of execution, and carries away the goods; or sues out a replevin to get another man's horse, and then runs away with him; this is a felony under colour of law. (*Bealey v. Sampson*, 2 Vent. 94; *Kel.* 83.)

Doing an act openly doth not make it the less a felony.

Returning the thing taken generally evinces that the party, when he took it, had no intention to deprive the owner of it, or to convert it to his own use. Returning the goods, however, can be considered merely as evidence of the defendant's intentions when he took them; for, if it appear that he took them originally with the intent of depriving the owner of them, and of appropriating them to his own use, his afterwards returning them will not purge the offence. (See 1 *Hawk. c.* 34, s. 2; 1 *Hale*, 533; *ante*, 218.)

Returning the goods.

The prisoner took plate out of a chest, and pledged it for a sum which he was unable to pay. The jury found him guilty of stealing the plate, but recommended him to mercy, on the ground that he intended ultimately to return the property; but they did not say that, at the time he took the property, he had any such intention: held, that the finding of the jury and their recommendation were not inconsistent, and that the conviction must be affirmed. (*Reg. v. Trebilcock*, 27 L. J., M. C. 103. And see *R. v. Wright*, *Old Bailey*, 1828, *Cur. C. L.* 278.)

It is laid down by several writers, that it is no felony for one reduced to extreme necessity to take so much of another's victuals as will save him from starving. But this can never be admitted as a legal defence in a country like this, where such humane laws prevail for the care and maintenance of the poor. Even if the case existed in fact, it would in truth be but little excuse that the party preferred this method of satisfying his necessity, rather than apply to the persons charged with carrying those laws into execution, because, perhaps, of some trouble or apprehen-

Stealing through necessity.

### 6. *The Felonious Intent.*

sion of reproof. Yet, still, in apportioning the punishment, the Court will have a tender regard to cases of real necessity, which may and do sometimes exist under the best regulated governments. A false sense of shame has sometimes tempted persons, otherwise well disposed, to the commission of these offences. Sometimes, it is to be feared, they have been driven to it by the cruel and unfeeling conduct of others, who are, in such instances, more just objects of severity than the unhappy sufferers. (2 *East's P. C.* 699; 1 *Hawk. c.* 23, s. 33.)

What the intent must be.

The felonious quality consists in the *intention* of the prisoner to defraud the owner, and to apply the thing stolen to his own benefit or use. (See 2 *Stark. on Evidence*, 827.) The intent need not be *lucri causâ*. Where a servant clandestinely took his master's corn, though to give it to his master's horses, he was held guilty of larceny; the servant, in some degree, being likely to diminish his labour thereby. (*R. v. Morfit, R. & R.* 307. And see *R. v. Van Mergen, R. & R.* 118.) And it seems to be now held that would be so, even if the intent of obtaining a private benefit be negated. (*Reg. v. Gruncell, 9 C. & P.* 365; *Reg. v. Handley, 1 C. & Mar.* 547; *Reg. v. Privett, 1 Den. C. C.* 193; 2 *C. & K.* 114.) The secreting and destroying of a post-letter, in the hope of suppressing inquiries supposed by the defendant to be made in it respecting her character, was held to be larceny. (*Reg. v. Jones, 1 Den. C. C.* 188; 2 *C. & K.* 236.)

With respect to the above cases of stealing corn, it is now provided by the 26 & 27 Vict. c. 103, s. 1, that any servant taking from his master's possession any corn, etc., contrary to his master's orders, for the purpose of giving the same to his master's horses, or other animals, shall not, by reason thereof, be deemed guilty of or be proceeded against for felony, etc. He is, however, liable to be punished for the misdemeanour.

Where A., to screen his accomplice, who was indicted for horse-stealing, broke into the prosecutor's stable, and took away the horse, which he backed into a coal-pit and killed; it being objected at the trial that this was not larceny, because the taking was not with an intention to convert the horse to the use of the taker, *animo furandi et lucri causâ*; seven of the judges held, that it was larceny, and six of that majority expressed their opinion that, to constitute larceny, if the taking were fraudulent, and with intent wholly to deprive the owner of the property, it was not essential that it should be *lucri causâ*; but some of this majority thought that the object of the prisoner might be deemed a benefit, and the taking *lucri causâ*. (*R. v. Cabbage, R. & R.* 292.)

It is sufficient if the prisoner intend to appropriate the value of the chattel, and not the chattel itself, to his own use; as where the owner of goods steals them from his own servant or bailee, in order to charge him with the amount, *ante*, 213.

Intention must exist at time of taking.

The *intention* must exist at the time of the *taking*, and no subsequent felonious intention will render the previous taking felonious; as, where goods are removed by the prisoner during a fire, with intent to preserve them for the owner, and he *afterwards* determine to appropriate them to his own use (2 *East's P. C.* 694); or, where a bailment is procured without any felonious intent on the part of the bailee, and he afterwards, and before the determination of the bailment, converts the property, this is not larceny at common law. (*East's P. C.* 694; *R. v. Banks, R. & R.* 441. And see *ante*, 209.)

Intention, a question for jury.

In all cases of larceny, the questions, whether the defendant took the goods knowingly or by mistake; whether he took them *bonâ fide* under a claim of right, or otherwise; and whether he took them with an intent to return them to the owner, or to deprive the owner of them altogether, and to appropriate or convert them to his own use, are questions entirely for the consideration of the jury, to be determined by them upon a view of the particular facts of the case. (1 *Leach*, 422; 2 *East's P. C.* 685; 1 *Hale*, 504; *ante*, 209.)

Possession of stolen property recently after its loss, if unexplained, is presumptive evidence that the party in possession stole it; but, after a lapse of sixteen months from the loss, a person will not be called upon to account for the manner in which the property came into his possession. (*R. v. —*, 2 *C. & P.* 459; *R. v. Stimpson*, 2 *C. & P.* 415. And see as to returning the goods, *ante*, 223.)

Such presumption will, however, vary according to the nature of the property stolen, and whether it be or be not likely to pass readily from hand to hand (*R. v. Partridge*, 7 *C. & P.* 551; *R. v. Hewlett*, 2 *Russ. on Crimes*, 728, 3rd edit.); or of which the accused would be likely, from his situation in life or vocation, to become innocently possessed. (*R. v. Cockin*, 2 *Lew. C. C.* 235, n.; 2 *Russ. on Crimes*, 123, 124, 3rd edit.)

Where there was no evidence to show when the goods were missed, or how long they had been in the prisoner's possession, it was held that the question of larceny was properly left to the jury. (*R. v. Knight*, *L. & C.* 578.)

The circumstances attending recent possession may, however, be of a character to rebut the presumption that the prisoner is the thief, and may support the presumption that he received them knowing them to have been stolen. (See *R. v. Langmead*, *L. & C.* 427.)

(a) *Interpretation of the Statute.*

## II. Larceny, etc., by Statute.

The offence of larceny at common law has, from time to time, been considered by the legislature to be of too confined a description for the protection of property and the punishment of offenders: consequently, statutes have been passed, extending the offence to different persons and kinds of property, not coming within the strict definition of the offence at common law, and also imposing heavier punishments in aggravated cases of larceny, as regards the stealing from the person and from particular places.

The statutes and parts of statutes relating to larceny and other similar offences having been repealed by the 7 & 8 Geo. 4, c. 27, the statute 7 & 8 Geo. 4, c. 29 was passed, consolidating the laws relating to those offences. This statute was followed by several others, which by the 24 & 25 Vict. c. 95, have been wholly or in part repealed; and almost the whole statute law with regard to larceny is now to be found in the 24 & 25 Vict. c. 96, which is entitled "An Act to consolidate and amend the statute law of England and Ireland relating to larceny and other similar offences," and came into operation on the 1st of November, 1861.

We shall proceed to consider the law under this statute, taking the several sections in the order in which they stand in the statute.

Mode of considering the subject.

### (a) INTERPRETATION OF THE STATUTE.

By the 24 & 25 Vict. c. 96, s. 1, in the interpretation of this Act, "the term 'document of title to goods' shall include any bill of lading, India warrant, dock warrant, warehouse-keeper's certificate, warrant or order for the delivery or transfer of any goods or valuable thing, bought and sold note, or any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by indorsement or by delivery, the possessor of such document to transfer or receive any goods thereby represented or therein mentioned or referred to."

"Document of title to goods."

"The term 'document of title to lands' shall include any deed, map, paper, or parchment, written or printed, or partly written and partly

"Document of title to lands."

(b) *Distinction between Grand and Petit Larceny Abolished.*

"Trustee."

printed, being or containing evidence of the title or any part of the title to any real estate, or to any interest in or out of any real estate."

"The term 'trustee' shall mean a trustee on some express trust created by some deed, will, or instrument in writing, and shall include the heir or personal representative of any such trustee, and any other person upon or to whom the duty of such trust shall have devolved or come, and also an executor or administrator and an official manager, assignee, liquidator, or other like officer, acting under any present or future Act relating to joint-stock companies, bankruptcy, or insolvency."

"Valuable security."

"The term 'valuable security' shall include any order, exchequer acquittance, or other security whatsoever entitling or evidencing the title of any person or body corporate to any share or interest in any public stock or fund, whether of the United Kingdom or of Great Britain or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society, whether within the United Kingdom or in any foreign state or country, or to any deposit in any bank, and shall also include any debenture deed, bond, bill, note, warrant, order, or other security whatsoever for money or for payment of money, whether of the United Kingdom or of Great Britain or of Ireland or of any foreign state, and any document of title to lands or goods as hereinbefore defined."

"Valuable security" includes documents of title.

It will be observed that by this clause the term "valuable security" includes all the matters contained under the previous definitions of "document of title to goods" and "document of title to lands."

"Property."

"The term 'property' shall include every description of real and personal property, money, debts, and legacies, and all deeds and instruments relating to or evidencing the title or right to any property, or giving a right to recover or receive any money or goods, and shall also include, not only such property as shall have been originally in the possession or under the control of any party, but also any property into or for which the same may have been converted or exchanged, and anything acquired by such conversion or exchange, whether immediately or otherwise."

"Night."

"For the purposes of this Act the night shall be deemed to commence at nine of the clock in the evening of each day, and to conclude at six of the clock in the morning of the next succeeding day."

As to the constructions which these several clauses have received, see *post*, under the remarks upon the sections of which these clauses are explanatory.

Masculine to include feminine, and singular the plural, etc.

By Lord *Brougham's* Act, 13 & 14 Vict. c. 21, s. 4, "In all Acts, words importing the masculine gender shall be deemed and taken to include females, and the singular to include the plural and the plural the singular, unless the contrary as to gender and number is expressly provided; and the word 'month' to mean calendar month, unless words be added showing lunar month to be intended; and 'county' shall be held to mean also county of a town or of a city, unless such extended meaning is expressly excluded by words; and the word 'land' shall include messuages, tenements and hereditaments, houses and buildings of any tenure, unless there are words to exclude houses and buildings, or to restrict the meaning to tenements of some particular tenure; and the words 'oath,' 'swear,' and 'affidavit,' shall include affirmation, declaration, affirming and declaring, in the case of persons by law allowed to declare or affirm instead of swearing."

"Month."

"County."

"Land."

"Oath."

#### (b) DISTINCTION BETWEEN GRAND AND PETIT LARCENY ABOLISHED.

By the 24 & 25 Vict. c. 96, s. 2, "Every larceny, whatever be the value of the property stolen, shall be deemed to be of the same nature,

and shall be subject to the same incidents in all respects, as grand larceny was before the 21st of June, 1827; and every Court whose power as to the trial of larceny was before that time limited to petty larceny shall have power to try every case of larceny the punishment of which cannot exceed the punishment hereinafter mentioned for simple larceny, and also to try all accessories to such larceny."

(c) *Larceny by Bailees.*

(c) LARCENY BY BAILEES.

By the 24 & 25 Vict. c. 96, s. 3, "Whosoever, being a bailee of any chattel, money, or valuable security, shall fraudulently take or convert the same to his own use, or the use of any person other than the owner thereof, although he shall not break bulk or otherwise determine the bailment, shall be guilty of larceny, and may be convicted thereof upon an indictment for larceny; but this section shall not extend to any offence punishable on summary conviction."

Fraudulent bailee guilty of larceny.

As to the meaning of the words, "valuable security," see sect. 1, *ante*, 226, and the cases on s. 27, *post*, 236.

The proviso prevents the application of the clause to cases of persons employed in silk, woollen, or other manufactures, who dispose of goods entrusted to them, and who are liable to be summarily convicted under sundry statutes.

Summary convictions.

The object of this clause is to provide for those cases where the possession passed from the real owner but not the property. In order to bring a case within this section, it must be shown that there was such a delivery of the goods, etc., as to vest the possession of them for the time in the prisoner, and also that at the expiration of that time the goods, etc., were to be restored or to be delivered to some one else.

Possession in the prisoner.

A carrier who receives money to procure goods, obtains and duly delivers the goods, but fraudulently retains the money, is within this section. (*R. v. Wells*, 1 F. & F. 109.) So one who takes a watch from the pocket of a tipsy man with his consent is a bailee of the watch. (*R. v. Reeves*, 5 Jur. N. S. 716.) The bailment intended is a deposit of something to be specifically returned; and therefore one who receives money with no obligation to return the identical coins received is not a bailee within the section. (*Reg. v. Hassall*, 1 Leigh & Cave, C. C. 58; *Reg. v. Garratt*, 2 F. & F. 14; *Reg. v. Hoare*, 1 F. & F. 647.)

Who is a bailee?

Where the prosecutor gave the prisoner 8s. 6d. to pay for half a ton of coals, and to bring them home to the prosecutor in the prisoner's own cart, and the prisoner purchased the coals and loaded them into his cart, but afterwards abstracted a portion of them fraudulently, it was held that the prisoner was guilty of larceny as a bailee, some of the judges thinking that, the coal being purchased with money given by the prosecutor for that purpose, the property vested in the prosecutor, others thinking that there ought to be evidence of a specific appropriation of the coals to the prosecutor; and all the Court agreed that there was such evidence. (*Reg. v. Bunkall*, 33 L. J., M. C. 75.)

Where the prisoner was employed to take coals in his cart, and deliver specified quantities to certain persons, and he fraudulently appropriated a part of the coals, he was held to be rightly convicted of larceny as a bailee. (*Reg. v. Davies*, 10 Cox, C. C. 239.)

The trustee of a friendly society is not the bailee of the money of the society handed to him to deposit in the bank. (*Reg. v. Loose, Bell*, C. C. 259.)

Trustee of a friendly society not a bailee.

It was held in *Reg. v. Dunmore*, 8 Cox, C. C. 440, that a married woman could not be convicted under this section because she could not be a bailee; but in a later case it was thought by *Pollock*, C.B., and *Martin*, B., that, although she could not enter into a contract of bailment,

Married woman may be a bailee



(e) *Indictments for Several Takings.*

yet she might become a bailee within the meaning of the above-mentioned statute, by licence. (*Reg. v. Robson*, 31 *L. J.*, *M. C.* 22; *Leigh & Cave*, *C. C.* 93.)

Where all control over the chattel is parted with, the prisoner cannot be convicted, although he has obtained possession of the chattel by fraud. (*Reg. v. Hunt*, 8 *Cox C. C.* 495.)

Evidence of bailment.

Where the prosecutor, being drunk, saw the prisoner take his watch out of his pocket, and took no steps to prevent the prisoner doing so, believing that the prisoner was acting as his friend, it was objected that there was no trespass and consequently no larceny; but *Crowder, J.*, said, "This evidence would not support a charge of larceny at common law; but the evidence discloses a bailment sufficient to bring the case within the 24 & 25 Vict. c. 96, s. 3, if the jury are satisfied on the facts." (*Reg. v. Reeves*, 5 *Jur.* 716.)

(d) PUNISHMENTS FOR SIMPLE LARCENY.

It will be observed that ss. 4, 7, 8, and 9, relate only to the punishment of simple larceny, or any offence made punishable like simple larceny by the Act. The punishment to be awarded for particular offences under the Act will be found in the sections relating to those particular offences. As to hard labour and solitary confinement, see ss. 118, 119, *post*.

Punishment for simple larceny.

By the 24 & 25 Vict. c. 96, s. 4, "Whosoever shall be convicted of simple larceny, or of any felony hereby made punishable like simple larceny, shall (except in the cases hereinafter otherwise provided for) be liable at the discretion of the Court to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

But now by the 27 & 28 Vict. c. 47, no person can be sentenced to penal servitude for a less period than five years, or for a less period than seven years after a previous conviction for felony. See *post*, tit. "*Penal Servitude*."

For the punishment for larceny after a previous conviction, see ss. 7, 8, 9, *post*, 229.

(e) INDICTMENTS FOR SEVERAL TAKINGS.

Three larcenies within six months may be charged in one indictment.

By the 24 & 25 Vict. c. 96, s. 5, "It shall be lawful to insert several counts in the same indictment against the same person for any number of distinct acts of stealing, not exceeding three, which may have been committed by him against the same person within the space of six months from the first to the last of such acts, and to proceed thereon for all or any of them."

Before the passing of the Act, it was no objection in point of law that an indictment contained separate counts charging distinct felonies of the same degree, and committed by the same offender. (2 *Hale*, 173; 1 *Chit. C. L.* 253; *O'Connell v. R.*, 11 *Cl. & F.* 155; *Reg. v. Heywood*, *L. & C.* 451.) It was, in truth, a matter for the discretion of the Court; and, if the Court thought the prisoner would be embarrassed by the counts, the Court would either quash the indictment, or compel the counsel for the prosecution to elect. (*R. v. Young*, 3 *T. R.* 106; 2 *East's P. C.* 515.) It seems that, where three acts of larceny are charged in separate counts, there may also be three counts for receiving. (*Reg. v. Heywood*, *L. & C.* 451. See s. 92, *post*.)

Where a single taking is charged, and several

By s. 6, "If, upon the trial of any indictment for larceny, it shall appear that the property alleged in such indictment to have been stolen

at one time was taken at different times, the prosecutor shall not, by reason thereof, be required to elect upon which taking he will proceed, unless it shall appear that there were more than three takings, or that more than the space of six months elapsed between the first and the last of such takings; and, in either of such last-mentioned cases, the prosecutor shall be required to elect to proceed for such number of takings, not exceeding three, as appear to have taken place within the period of six months from the first to the last of such takings."

(f) *Punishment after a Previous Conviction.*

takings at different times are proved.

The effect of the above section, and the preceding section 5, is to restrain the power of the Court with respect to the doctrine of election. The Court cannot now put the prosecutor to his election where the indictment charges three acts of larceny within six months, or where the evidence shows that the property was not stolen at more than three different times, and that not more than six months had elapsed between the first and last of such times. But, on the other hand, the Court is not bound by the above sections to put the prosecutor to his election in other cases, but is left to its discretion, according to the old practice at common law. (*Reg. v. Heywood, L. & C. 451.*)

#### (f) PUNISHMENT FOR LARCENY AFTER A PREVIOUS CONVICTION.

By the 24 & 25 Vict. c. 96, s. 7, "Whosoever shall commit the offence of simple larceny after a previous conviction for felony, whether such conviction shall have taken place upon an indictment or under the 18 & 19 Vict. c. 126" [Summary Jurisdiction], "shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding ten years and not less than three years (a); or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and, if a male under the age of sixteen years, with or without whipping."

Larceny after a previous conviction for felony.

Sect. 8. "Whosoever shall commit the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been previously convicted of any indictable misdemeanour under this Act, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, and not less than three (a) years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and, if a male under the age of sixteen years, with or without whipping."

Larceny after indictable misdemeanour.

It should be observed that, by the 7 & 8 Geo. 4, c. 28, s. 11, and the 9 Geo. 4, c. 54 (I), any person convicted of any felony, after a previous conviction for felony (not capital), was liable to transportation for life. Then the 16 & 17 Vict. c. 99, s. 12, provided that no person should be liable to transportation by reason only of a conviction of larceny after a previous conviction for felony. Therefore, although the subsequent Act repeals the former as far as *larceny* after a previous felony is concerned, yet, as to any other kind of felony after a previous felony, the old Acts would apply.

Sect. 9. "Whosoever shall commit the offence of simple larceny, or any offence hereby made punishable like simple larceny, after having been twice summarily convicted of any of the offences punishable upon summary conviction under the provisions of the 7 & 8 Geo. 4, cc. 29, 30, or the 9 Geo. 4, cc. 55, 56, or the 10 & 11 Vict. c. 59, or in sections three, four, five, and six of the Act of the 14 & 15 Vict. c. 92, or in this Act, or the Act of this session, intituled, 'An Act to Consolidate and Amend

Larceny after two summary convictions.

(a) But see now the 27 & 28 Vict. c. 47, by which no person can be sentenced to penal servitude for a less

period than five years, or for a less period than seven years after a previous conviction for felony.

(g) *Larceny of Cattle, etc.*

the Statute Law of England and Ireland relating to Malicious Injuries to Property' (24 & 25 Vict. c. 97), (whether each of the convictions shall have been in respect of an offence of the same description or not, and whether such convictions, or either of them, shall have been or shall be before or after the passing of this Act), shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, and not less than three (a) years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and, if a male under the age of sixteen years, with or without whipping."

(g) LARCENY OF CATTLE AND OTHER ANIMALS.

This is an offence at common law, see *ante*, 216.

Stealing horses, cows, sheep, etc.

And by the 24 & 25 Vict. c. 96, s. 10, "Whosoever shall steal any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, or lamb, shall be guilty of felony; and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Killing with intent to steal.

Sect. 11. "Whosoever shall wilfully kill any animal with intent to steal the carcase, skin, or any part of the animal so killed, shall be guilty of felony; and, being convicted thereof, shall be liable to the same punishment as if he had been convicted of feloniously stealing the same, provided the offence of stealing the animal so killed would have amounted to felony."

Other animals.

This latter section is framed from the 7 & 8 Geo. 3, c. 29, s. 25, and the 9 Geo. 4, c. 55, s. 25, so far as it relates to the animals mentioned in s. 10; but it is extended to other animals, the stealing of which is felony. It will, therefore, include asses, pigs, etc.

What constitutes the offence.

If a person go to an inn, and direct the ostler to bring out his horse, and point out the prosecutor's horse as his, and the ostler leads out the horse for the prisoner to mount, but, before the prisoner gets on the horse's back, the owner of the horse comes up and seizes him, the offence of horse-stealing is complete. (*R. v. Pitman*, 2 C. & P. 243. See also, *R. v. Philips*, 2 East's P. C. 662, 663; and *R. v. Harvey*, 1 Leach, 467.)

If a person stealing other property take a horse, not with intent to steal it, but only to get off more conveniently with the other property, such taking of the horse is not a felony. (*R. v. Crump*, 1 C. & P. 658.)

But, where defendant hired a horse on pretence of taking a journey, but really for the purpose of stealing it (*R. v. Pear*, 1 Leach, 212; *R. v. Banks*, R. & R. 441), or hired it in the name of another person for the same purpose (*R. v. Charlewood*, 1 Leach, 409), he was held rightly convicted of stealing the horse. (See also *R. v. Stock*, 1 Moo. C. C. 87; *Reg. v. Smith*, 1 Car. & K. 423.)

Sheep-stealing.

Where the defendant removed sheep from the fold into the open field, killed them, and took away the skins merely, the judges held that removing the sheep from the fold was a sufficient driving away to constitute larceny. (*R. v. Rawlins*, 2 East's P. C. 617.) But it has been questioned, whether the merely removing a live sheep for the purpose of killing it, with intent to steal part of the carcase, was an asportation, under the first part of the 14 Geo. 2, c. 6, of the live sheep. (*R. v. Wil-*

(a) But see now the 27 & 28 Vict. c. 47, by which no person can be sentenced to penal servitude for a less

period than five years, or for a less period than seven years after a previous conviction for felony.

*liams*, 1 *Moo. C. C.* 107.) It should seem it was not. (See *R. v. Yend*, 6 *C. & P.* 176. See "*Russell on Crimes*," 4th edit. vol. ii. p. 361.) (g) *Larceny of Cattle, etc.*

The animal must be described by the name given it by the statute. Upon an indictment, therefore, for stealing *sheep*, a prisoner cannot be convicted for stealing *ewes* or *lambs*, unless the indictment is amended, the above Act specifying *sheep* as well as *lambs* and *ewes*. (*R. v. Loom and others*, 1 *Moo. C. C.* 160; *R. v. Puddifoot*, *Id.* 247; *R. v. Birkett*, 4 *C. & P.* 216; but see *Reg. v. M'Culley*, 2 *Moo. C. C.* 34.)

But a rig sheep or wether may properly be described as a sheep. (*R. v. Stroud*, 6 *C. & P.* 535. And see *R. v. Beaney*, *R. & R.* 416; *R. v. Welland*, *Id.* 494.)

In *Reg. v. M'Culley* (2 *Moo. C. C.* 34) it was held that "sheep" was a generic term, including "ram" and "ewe," which come before it in the section of the Act, but not including (it should seem) "lamb," which follows it. (But see *Reg. v. Spicer*, 1 *Den. C. C.* 82.) A variance such as this, however, would now be amended.

Cutting off part of a sheep (in this instance the leg) while it is alive, with intent to steal it, will support an indictment for killing with intent to steal, if the cutting off must occasion the sheep's death. (*R. v. Clay*, *R. & R.* 387.)

So, on the trial of an indictment for killing a ewe with intent to steal the carcase, it appeared that the prisoner wounded the ewe by cutting her throat, and was then interrupted by the prosecutor, and the ewe died of the wound two days after. It was found by the jury who convicted the prisoner that he intended to steal the carcase of the ewe. The fifteen judges held the conviction right. (*Reg. v. Sutton*, 8 *C. & P.* 291.)

This statute, it will be noticed, applies only to the stealing of live cattle, so that, if dead animals be stolen, it is but a common larceny, and the punishment is different.

As to accessories after the fact, see tit. "*Accessory*," Vol. I.

By sect. 12, "Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the uninclosed part of any forest, chase, or purlieu, shall for every such offence, on conviction thereof before a justice of the peace, forfeit and pay such sum, not exceeding fifty pounds, as to the justice shall seem meet; and whosoever, having been previously convicted of any offence relating to deer for which a pecuniary penalty shall have been imposed by this or by any former Act of Parliament, shall afterwards commit any of the offences hereinbefore enumerated, whether such second offence be of the same description as the first or not, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

Stealing deer in an uninclosed part of a forest.

Second offence.

Sect. 13. "Whosoever shall unlawfully and wilfully course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound, any deer kept or being in the inclosed part of any forest, chase, or purlieu, or in any inclosed land where deer shall be usually kept, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

Stealing deer in any inclosed ground.

The word "deer" was held by *Maule, J.*, at the Gloucester Summer Assizes, 1843, to include all kinds of deer, all ages, and both sexes. (*Reg. v. Strange*, 1 *Cox, C. C.* 58. See *Greaves, Crim. Acts.* 79.) "Deer."

An inclosure in the Forest of Dean, made under a statute of Chas. 2, for the protection of timber, and surrounded by a ditch and bank which "Inclosed."

(g) *Larceny of Cattle, etc.*

were sufficient to prevent cattle getting into it, but over which the deer could pass in and out of their free will, was held by *Erle, J.*, to be an inclosed part of a forest; and the words "wherein deer shall be usually kept" were held to refer to inclosed land only. (*Reg. v. Money, Gloucester Summer Assizes, 1847.* See *Greaves, Crim. Acts. 80.*)

Upon an indictment for killing deer after a previous conviction, objections might be taken to the validity of such previous conviction. (*R. v. Allen, Russ. & Ry. 513.*)

Suspected persons found in possession of venison, etc., and not satisfactorily accounting for it.

Penalty.

In case they cannot be convicted, how the justices may proceed.

Setting engines for taking deer or pulling down park fences.

Deer keepers, etc., may seize the guns, etc., of offenders who, on demand, do not deliver up the same.

Penalty on resistance to keepers, etc., in the execution of their duty.

There must be a beating.

By sect. 14, "If any deer, or the head, skin, or other part thereof, or any snare or engine for the taking of deer, shall be found in the possession of any person or on the premises of any person with his knowledge, and such person, being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by such deer, or the head, skin, or other part thereof, or had a lawful occasion for such snare or engine, and did not keep the same for any unlawful purpose, he shall, on conviction by the justice, forfeit and pay any sum not exceeding twenty pounds; and, if any such person shall not under the said provisions be liable to conviction, then, for the discovery of the party who actually killed or stole such deer, the justice, at his discretion, as the evidence given and the circumstances of the case shall require, may summon before him every person through whose hands such deer, or the head, skin, or other part thereof, shall appear to have passed; and, if the person from whom the same shall have been first received, or who shall have had possession thereof, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, be liable to the payment of such sum of money as is hereinbefore last mentioned."

By sect. 15, "Whosoever shall unlawfully and wilfully set or use any snare or engine whatsoever, for the purpose of taking or killing deer, in any part of any forest, chase, or purlieu, whether such part be inclosed or not, or in any fence or bank dividing the same from any land adjoining, or in any inclosed land where deer shall be usually kept, or shall unlawfully and wilfully destroy any part of the fence of any land where any deer shall be then kept, shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding twenty pounds, as to the justice shall seem meet."

By sect. 16, "If any person shall enter into any forest, chase, or purlieu, whether inclosed or not, or into any inclosed land where deer shall be usually kept, with intent unlawfully to hunt, course, wound, kill, snare, or carry away any deer, every person intrusted with the care of such deer, and any of his assistants, whether in his presence or not, may demand from every such offender any gun, fire-arms, snare, or engine in his possession, and any dog there brought for hunting, coursing, or killing deer, and, in case such offender shall not immediately deliver up the same, may seize and take the same from him in any of those respective places, or, upon pursuit made, in any other place to which he may have escaped therefrom, for the use of the owner of the deer; and, if any such offender shall unlawfully beat or wound any person intrusted with the care of the deer, or any of his assistants, in the execution of the powers given by this Act, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

Merely pulling the keeper to the ground and holding him there while a confederate escapes is not within the statute. (*Reg. v. Hale, 2 Car. & K. 326.*)

There must be a demand before seizure (*R. v. Amey, R. & R. C. C. 500*), even under the old statute, where it was not so provided by the Act. (g) *Larceny of Cattle, etc.*

A doubt was raised in *R. v. Amey (R. v. R. C. C. 500)*, as to whether an assistant was authorized to demand and seize guns, etc., in the absence of the keeper whose assistant he was, which doubt is removed by the words of the present section.

Demand before seizure.

An assistant may seize.

By sect. 17, "Whosoever shall unlawfully and wilfully, between the expiration of the first hour after sunset and the beginning of the last hour before sunrise, take or kill any hare or rabbit in any warren or ground lawfully used for the breeding or keeping of hares and rabbits, whether the same be inclosed or not, shall be guilty of a misdemeanour; and whosoever shall unlawfully and wilfully, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, take or kill any hare or rabbit in any such warren or ground, or shall at any time set or use therein any snare or engine for the taking of hares or rabbits, shall, on conviction thereof before a justice of the peace, forfeit and pay such sum of money, not exceeding five pounds, as to the justice shall seem meet; provided that nothing in this section contained shall affect any person taking or killing in the day-time any rabbits on any sea bank or river bank in the county of Lincoln, so far as the tide shall extend, or within one furlong of such bank."

Killing, etc., hares or rabbits in a warren in the night time.

The like in the day-time.

Exception.

The repealed section had only the words "in the night-time" and "in the day-time" respectively; and, as the statute did not define night-time, it was taken to mean, as in burglary, before the 7 Wm. 4 & 1 Vict. c. 86, s. 4, either the night itself, or that part of twilight when there was not daylight sufficient to discern a man's face. (See 1 *Hale, P. C.* 550.)

Where the prisoner was seized as he was about to lay hold of a wire which he had previously set, and in which a coney was caught, it was held that the taking by the wire was a sufficient "taking." (*Glover's case, R. & R.* 269.)

What is a taking.

The section applies to places which are commonly called warrens, or where rabbits are commonly or perhaps exclusively kept, not to places where a few rabbits may be kept, as in a rickyard, etc. (See *R. v. Garratt, 6 C & P.* 369.)

What is a warren, etc.

By sect. 18, "Whosoever shall steal any dog shall, on conviction thereof before two justices of the peace, either be committed to the common gaol or house of correction, there to be imprisoned, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or shall forfeit and pay, over and above the value of the said dog, such sum of money not exceeding twenty pounds as to the said justice shall seem meet; and whosoever having been convicted of any such offence either against this or any former Act of Parliament shall afterwards steal any dog shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour."

Stealing dogs.

Second offence.

By sect. 19, "Whosoever shall unlawfully have in his possession or on his premises any stolen dog or the skin of any stolen dog, knowing such dog to have been stolen, or such skin to be the skin of a stolen dog, shall, on conviction thereof before two justices of the peace, be liable to pay such sum of money not exceeding twenty pounds as to such justices shall seem meet; and whosoever having been convicted of any such offence either against this or any former Act of Parliament shall afterwards be guilty of any such offence as in this section before mentioned, shall be guilty of a misdemeanour, and being convicted thereof shall be liable at the discretion of

Possession of stolen dogs.

Second offence.

*Birds,  
Beasts, etc.*

Taking money to  
restore dogs.

the Court to be imprisoned for any term not exceeding eighteen months with or without hard labour."

By sect. 20, "Whosoever shall corruptly take any money or reward directly or indirectly, under pretence or upon account of aiding any person to recover any dog which shall have been stolen or which shall be in the possession of any person not being the owner thereof, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding eighteen months, with or without hard labour."

As to corruptly taking money for recovering property generally, or improperly advertising a reward, see ss. 101 & 102, *post*.

## BIRDS, BEASTS, OR OTHER ANIMALS.

By sect. 21, "Whosoever shall steal any bird, beast, or other animal ordinarily kept in a state of confinement, or for any domestic purpose, not being the subject of larceny at common law, or shall wilfully kill any such bird, beast, or animal, with intent to steal the same or any part thereof, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the bird, beast, or other animal, such sum of money not exceeding twenty pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any offence in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit."

Persons found in  
possession of  
stolen beasts,  
etc., liable to  
penalties.

By sect. 22, "If any such bird, or any of the plumage thereof, or any dog, or any such beast, or the skin thereof, or any such animal, or any part thereof, shall be found in the possession or on the premises of any person, any justice may restore the same respectively to the owner thereof; and any person in whose possession or on whose premises such bird or the plumage thereof, or such beast or the skin thereof, or such animal or any part thereof, shall be so found (such person knowing that the bird, beast, or animal has been stolen, or that the plumage is the plumage of a stolen bird, or that the skin is the skin of a stolen beast, or that the part is a part of a stolen animal), shall, on conviction before a justice of the peace, be liable for the first offence to such forfeiture, and for every subsequent offence to such punishment as any person convicted of stealing any beast or bird is made liable to by the last preceding section."

Killing pigeons.

By sect. 23, "Whosoever shall unlawfully and wilfully kill, wound, or take any house-dove or pigeon under such circumstances as shall not amount to larceny at common law, shall, on conviction before a justice of the peace, forfeit and pay, over and above the value of the bird, any sum not exceeding two pounds."

This clause does not extend to killing pigeons under a claim of right. (*Taylor v. Newman*, 9 *Cox*, C. C. 314.)

Taking fish in  
any water situate  
in land belonging  
to a dwelling  
house;

By sect. 24, "Whosoever shall unlawfully and wilfully take or destroy any fish in any water which shall run through or be in any land adjoining or belonging to the dwelling-house of any person being the owner of such water, or having a right of fishery therein, shall be guilty of a misdemeanour; and whosoever shall unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any water not being such as hereinbefore mentioned, but which shall be private property, or

in which there shall be any private right of fishery, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the fish taken or destroyed (if any), such sum of money, not exceeding five pounds, as to the justice shall seem meet: provided, that nothing hereinbefore contained shall extend to any person angling between the beginning of the last hour before sunrise, and the expiration of the first hour after sunset; but, whosoever shall by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset unlawfully and wilfully take or destroy, or attempt to take or destroy, any fish in any such water as first mentioned, shall, on conviction before a justice of the peace, forfeit and pay any sum not exceeding five pounds, and, if in any such water as last mentioned, he shall, on the like conviction, forfeit and pay any sum not exceeding two pounds, as to the justice shall seem meet; and, if the boundary of any parish, township, or vill, shall happen to be in or by the side of any such water as is in this section before mentioned, it shall be sufficient to prove that the offence was committed either in the parish, township, or vill named in the indictment or information, or in any parish, township, or vill adjoining thereto."

Larceny at common law may be committed of fish in certain cases. See *ante*, 217.

As to what may be construed as a taking, see *Glover's case*, *ante*, 233. The taking.

As to the meaning of the term "adjoining," see *R. v. Hodges*, *post*, 241. "Adjoining."

Where, upon an information under this section, a claim of right is set up by the defendant, it is for the justices to determine whether such claim is made *bonâ fide* and with some show of reason; and, if they think it is, they are ousted of their jurisdiction; but if it is made *malâ fide* or wholly without colour, in either of these cases the justices may convict. (*Reg. v. Stimpson*, and *Reg. v. Peak*, 9 *Cox*, *C. C.* 356; *Hudson v. Macrea*, 4 *B. & S.* 592.) Claim of right.

By sect. 25, "If any person shall at any time be found fishing against the provisions of this Act, the owner of the ground, water, or fishery where such offender shall be so found, his servant, or any person authorized by him, may demand from such offender any rod, line, hook, net, or other implement for taking or destroying fish which shall then be in his possession, and, in case such offender shall not immediately deliver up the same, may seize and take the same from him for the use of such owner: provided, that any person angling against the provisions of this Act, between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, from whom any implement used by anglers shall be taken, or by whom the same shall be so delivered up, shall by the taking or delivering thereof be exempted from the payment of any damages or penalty for such angling." The tackle of fishers may be seized.

By sect. 26, "Whosoever shall steal any oysters or oyster brood from any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny; and whosoever shall unlawfully and wilfully use any dredge, or any net, instrument, or engine whatsoever, within the limits of any oyster bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such, for the purpose of taking oysters or oyster brood, although none shall be actually taken, or shall unlawfully and wilfully, with any net, instrument, or engine, drag upon the ground or soil of any such fishery, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding three Angler, on seizure of his tackle, exempt from penalty.

*Birds,*  
*Beasts, etc.*

or in a private fishery elsewhere.  
Provision respecting anglers.

Provision as to boundaries of parishes.

Stealing or dredging for oysters in oyster fisheries.



(h) *Larceny of Written Instruments.*

Form of indictment.  
 Proviso as to floating fish.

months, with or without hard labour, and with or without solitary confinement; and it shall be sufficient in any indictment to describe either by name or otherwise the bed, laying, or fishery in which any of the said offences shall have been committed, without stating the same to be in any particular parish, township, or vill: provided, that nothing in this section contained shall prevent any person from catching or fishing for any floating fish within the limits of any oyster fishery with any net, instrument, or engine adapted for taking floating fish only."

## (h) LARCENY OF WRITTEN INSTRUMENTS.

As already stated, *ante*, 216, bonds, bills, etc., are not the subjects of larceny at the common law.

Bonds, bills,  
 notes, etc.

But now, by the 24 & 25 Vict. c. 96, s. 27, "Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, or obliterate the whole or any part of any valuable security, other than a document of title to lands, shall be guilty of felony of the same nature and in the same degree and punishable in the same manner as if he had stolen any chattel of like value with the share, interest, or deposit to which the security so stolen may relate, or with the money due on the security so stolen, or secured thereby and remaining unsatisfied, or with the value of the goods or other valuable thing represented, mentioned, or referred to in or by the security."

As to the interpretation of "valuable security," see sect. 1, *ante*, 226, and the cases cited below.

What is stealing within the Act.

To constitute the offence, it must be proved that the defendant stole the bill, etc., as stated. Where the defendant, a stockbroker, received from the prosecutor a cheque upon his banker, to purchase Exchequer bills for him, and cashed the cheque, and absconded with the money, upon an indictment for stealing the cheque and the proceeds of it, it was holden to be no larceny, although the jury found that, before he received the cheque, the defendant had formed the intention of converting the money to his own use; not of the cheque, because the defendant had used no fraud or contrivance to induce the prosecutor to give it to him, and because, being the prosecutor's own cheque, and of no value in his hands, it could not be called his goods and chattels; nor of the proceeds of the cheque, because the prosecutor never had possession of them, except by the hands of the defendant. (*R. v. Walsh, R. & R.* 215. But see *R. v. Metcalfe*, 1 *Moo. C. C.* 433.)

What instrument is within the Act.

With respect to what instrument or security is within the Act, the following decisions have taken place:—

At a conference of the judges in Easter Term, 1781, *Nares, J.*, mentioned that a person was convicted before him for privately stealing from the person of another a pocket-book containing a note of the Bristol Bank, signed by some one on behalf of himself and partners, promising to pay to the prosecutor or order a sum of money, but which the prosecutor had not indorsed. All the judges were of opinion that this was a capital felony within the stat. 2 Geo. 2, c. 25, which made the stealing promissory notes, etc., felony, with the same consequences as goods of the like purported value; that this was a promissory note, and that its not being indorsed was immaterial. (*Anon.*, 2 *East's P. C.* 598.)

So, an indictment for stealing a bill of exchange in London was sustained by proof that, when found in the prisoner's possession there, it had an indorsement, made afterwards and not laid in the indictment; for the addition of a third name made no difference, it being the same bill that was originally stolen. (*Austin and King's case, Leicester Lent Assizes*, 1783, 2 *East's P. C.* 602.)

Where one was compelled by duress to make a promissory note on stamped paper, before prepared by the prisoner, who was present during

the time, and withdrew the note as soon as it was made, this was holden not to be a felony within the statute. For, according to some of the judges, that is confined to available securities in the hands of the party robbed, which this was not, being of no value while in the hands of the maker himself. Yet, even if it were, according to others, this was never in his possession; his signature having been procured by duress to a paper which during the whole continuing transaction was in possession of the prisoner. (*Phipoe's case*, 2 *Leach* 673; 2 *East's P. C.* 599.)

And where, in consequence of an advertisement, A. applied to B. to raise money for him, who promised to procure £5000, and produced ten blank 6s. stamps, across which A. wrote an acceptance, and B. took them up without saying anything, and afterwards filled up the stamps as bills for £500 each, and put them in circulation, it was holden by *Littledale, J., Bolland, B., and Bosanquet, J.*, that the stamps so filled up were not bills of exchange, orders for the payment of money, or securities for money, within the meaning of the statute. (*R. v. Minter Hart*, 6 *C. & P.* 106.)

Where the prisoner had induced the prosecutor to become the purchaser of certain goods, and drew a bill upon the prosecutor duly stamped and signed by himself as drawer, and payable to his own order, and the prosecutor accepted it, and thereupon the prisoner indorsed and discounted it, and applied the proceeds to his own use; it was held, that the bill of exchange being the property of the prisoner, and not of the prosecutor, or any person other than the prisoner, was not a valuable security within the meaning of the Act. (*Reg. v. Danger, Dears. & B., C. C.* 307; 26 *L. J., M. C.* 186.) In the last three cases, however, the prisoner would now be indictable under sect. 90 of this Act. (See *post*.)

A cheque on a banker written on unstamped paper, payable to D. F. J. and not made payable to bearer, is not a valuable security; for it would be a breach in the law for the bankers to pay it. (*R. v. Yates*, 1828, *Car. C. L.* 273; 1 *Moo. C. C.* 170, *S. C.*)

The case of *R. v. Clark (R. & R.* 182), where the prisoner was indicted upon the 2 Geo. 2, c. 25, for stealing re-issuable notes after payment and before re-issuing, does not decide whether such notes were considered as valuable within the statute; for the judges held the conviction right on the counts for the value of the stamps and paper, not referring to the objection as to the value of the notes. But in *R. v. Ransom (R. & R.* 232; 2 *Leach*, 1090, 1093, *S. C.*), which was on the 7 Geo. 3, c. 50, s. 1, against a clerk in the post-office for secreting a letter containing country bank-notes paid in London and not re-issued, it was contended that they were not available within the Act; but the majority of the judges, among whom was Lord *Ellenborough*, thought otherwise; and as, upon the face of them, they remained uncanceled, they would, in the hands of a holder for a valuable consideration, be available against the makers. And see the case of *R. v. Vyse (1 Moo. C. C.* 218), where it was decided that re-issuable notes, if they cannot properly be called valuable securities whilst in the hands of the maker, may be called goods and chattels.

Wherever, therefore, the instrument would, in the hands of an innocent holder, be available against the maker, such an instrument would, it is apprehended, be considered of value. It may be worth while to consider, further, whether the possession of the subject-matter of the instrument is not sufficient to bring the offender within the Act. The object of the statute is to put the securities mentioned therein upon the same footing as the money they represent. The property consists in the power of disposing; if, therefore, the power of disposal is taken away, the possession and property are gone. The disposal of such property is effected by means of these instruments; every such act of disposal, therefore, it is apprehended, must be considered as an exercise of property, and the making of such a note, under any circumstances, an act of possession. If, therefore, such a promissory note, so obtained, would be

(h) *Larceny  
of Written  
Instruments.*

(h) *Larceny  
of Written  
Instruments.*

accounted of value, and to have been in the possession of the prosecutor, the offence would now, beyond doubt, come within the section.

In *Reg. v. West (Dears. & B., C. C. 109; 26 L. J., M. C. 6)*, the case of *R. v. Ransom* was relied on in the argument, and it appeared that A. stole notes of a provincial bank which were not then in circulation for value, but which were paid in at one branch of the bank, and were in course of transmission to another branch, in order to be re-issued: but it was held that, upon these facts, A. was rightly convicted.

The following instruments, also, have been held valuable securities:—a post-office money order (*Reg. v. Gilchrist, 2 Moo. C. C. 233*); a cheque on a banker (*Reg. v. Heath, 2 Moo. C. C. 33*); a pawnbroker's certificate (*Reg. v. Morrison, Bell, C. C. 158; 28 L. J., M. C. 210*); and a scrip certificate of a foreign railway company (*Reg. v. Smith, Dears. C. C. 56; 25 L. J., M. C. 31*).

It is to be observed that "valuable security" includes also "document of title to goods" and "document of title to lands" (see sect. 1, *ante*, 226), but that "documents of title to lands" are especially exempted in this section. It is, therefore, material, in drawing an indictment under this section, to show the sort of valuable security, in order to bring it within the section; and a variance between such description and the evidence will be fatal, unless amended. (*Reg. v. Lowrie, L. R. 1 C. C. R. 61; 36 L. J. M. C. 34*.)

Bank notes, how  
described.

Bank notes are properly described as "money," although, at the time of the larceny, they were not in circulation, but were in the hands of the bankers themselves. (*Reg. v. West, 26 L. J., M. C. 6*.)

Halves of notes.

Halves of notes should be described as "goods and chattels." (*R. v. Mead, 4 Car. & P. 535*.)

Instrument void  
for want of  
stamp.

If the instrument is void as a security, as, for instance, by being unstamped (*R. v. Porley, R. & R. C. C. 12*), it should be described as a piece of paper. (*Reg. v. Perry, 1 Den. C. C. 69*.)

But, where an executory contract was unstamped, it was held not to be the subject of larceny, being merely evidence of a chose in action; and that the prisoner could not be convicted on a count charging him with stealing a piece of paper. (*R. v. Watts, 23 L. J., M. C. 56; Parke, dissentiente*.)

Instrument  
described by its  
usual name or  
purport.

By the 14 & 15 Vict. c. 100, s. 5, it is provided that the instrument may be described by any name by which it is usually known, or by the purport thereof, without setting out any copy of it, or further description of it.

Deeds, etc., re-  
lating to real  
property.

By the 24 & 25 Vict. c. 96, s. 28, "Whosoever shall steal, or shall for any fraudulent purpose destroy, cancel, obliterate, or conceal the whole or any part of any document of title to lands, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and, in any indictment for any such offence relating to any document of title to lands, it shall be sufficient to allege such document to be or to contain evidence of the title or part of the title of the person, or of some one of the persons, having an interest, whether vested or contingent, legal or equitable, in the real estate to which the same relates, and to mention such real estate, or some part thereof."

And see the proviso in the next section.

As to the interpretation of the words "document of title to lands," see sect. 1, *ante*, 225.

As to the fraudulent concealment of deeds, etc., by a vendor or mortgagor, see the 22 & 23 Vict. c. 35, s. 24.

Form of indict-  
ment.

It seems that, in an indictment under this section and the two following for destroying, etc., for a fraudulent purpose, the purpose should be stated. (*Reg. v. Morris*, 9 C. & P. 89.)

(h) *Larceny of Written Instruments.*

By sect. 29, "Whosoever shall, either during the life of the testator or after his death, steal, or for any fraudulent purpose destroy, cancel, obliterate, or conceal the whole or any part of any will, codicil, or other testamentary instrument, whether the same shall relate to real or personal estate, or to both, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and it shall not, in any indictment for such offence, be necessary to allege that such will, codicil, or other instrument is the property of any person: Provided, that nothing in this or the last preceding section mentioned, nor any proceeding, conviction, or judgment to be had or taken thereupon, shall prevent, lessen, or impeach any remedy, at law or in equity, which any party aggrieved by any such offence might or would have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and no person shall be liable to be convicted of any of the felonies in this and the last preceding section mentioned, by any evidence whatever, in respect of any act done by him, if he shall, at any time previously to his being charged with such offence, have first disclosed such act, on oath, in consequence of any compulsory process of any Court of law or equity, in any action, suit, or proceeding which shall have been *bonâ fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy or insolvency."

The purpose must be stated.

Wills or codicils.

Other remedies not to be affected.

The proviso in this section is similarly framed to sect. 85, as to which see the notes to that section, *post*, 269.

By sect. 30, "Whosoever shall steal, or shall for any fraudulent purpose take from its place of deposit for the time being, or from any person having the lawful custody thereof, or shall unlawfully and maliciously cancel, obliterate, injure, or destroy the whole or any part of any record, writ, return, panel, process, interrogatory, deposition, affidavit, rule, order, or warrant of attorney, or of any original document whatsoever of or belonging to any Court of record, or relating to any matter, civil or criminal, begun, depending, or terminated in any such Court, or of any bill, petition, answer, interrogatory, deposition, affidavit, order, or decree, or of any original document whatsoever of or belonging to any Court of equity, or relating to any cause or matter begun, depending, or terminated in any such Court, or of any original document in any wise relating to the business of any office or employment under her Majesty, and being or remaining in any office appertaining to any Court of justice, or in any of her Majesty's castles, palaces, or houses, or in any government or public office, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement: and it shall not in any indictment for such offence be necessary to allege that the article in respect of which the offence is committed is the property of any person."

Stealing records or other legal documents.

Form of indictment.

Stealing rolls of parchment will be larceny at common law, according to the value of the parchment, though they be the records of a Court of justice, unless they concern the realty. (*R. v. Walker*, 1 Moo. C. C. 155. See *ante*, 216.)

(i) *Larceny of Things Attached to Land.*

Metal, glass, wood, etc., fixed to house or land.

## (i) AS TO LARCENY OF THINGS ATTACHED TO OR GROWING ON LAND.

By sect. 31, "Whosoever shall steal, or shall rip, cut, sever, or break with intent to steal, any glass or woodwork belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or of other material, or of both, respectively fixed in or to any building whatsoever, or anything made of metal fixed in any land being private property, or for a fence to any dwelling-house, garden, or area, or in any square or street, or in any place dedicated to public use or ornament, or in any burial ground, shall be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny; and in the case of any such thing fixed in any such square, street, or place as aforesaid, it shall not be necessary to allege the same to be the property of any person."

Larceny at common law cannot be committed of things attached to the freehold, unless they be severed from it. See *ante*, 216.

The venue can only be laid in the county in which the offence was committed. (*R. v. Millar*, 7 C. & P. 665.)

## "Building."

This enactment extends the offence much further than the prior Acts did, as it includes all utensils and fixtures of whatever materials made, either fixed to buildings or in land, or in a square or street. A church (*R. v. Parker*, 1 East's P. C. 592), indeed, all buildings (*R. v. Morris*, R. & R. 69), are within the Act. An indictment, therefore, for stealing lead fixed to a certain building, without further description, will suffice. (*R. v. Norris*, R. & R. 69.)

An unfinished building, boarded on all sides, with a door and a lock, and a roof of loose gorse, was held a building within the statute. (*R. v. Worrald*, 7 C. & P. 516.) So also where the lead stolen formed the gutters of two sheds built of brick, timber, and tiles upon a wharf fixed to the soil, it was held that this was a building within the Act. (*Reg. v. Rice*, Bell C. C. 87; 28 L. J., M. C. 64.) But a plank used as a seat and fixed on a wall with pillars, but with no roof, was held not to be a building. (*R. v. Reece*, 2 Russell on Crimes, 254, new edit.)

## "Place dedicated to public use."

Under the repealed stat. 7 & 8 Geo. 4, c. 29, s. 44, it was doubted whether a churchyard was a "place dedicated to public use" (*R. v. Blick*, 4 C. & P. 377; *Reg. v. Jones*, Dears. & B. 555; 27 L. J., M. C. 171); but the words "in any burial ground" have been added to the corresponding clause in the present statute.

Where a man (having given a false representation of himself) got into possession of a house, under a treaty for a lease of it, and then stripped it of the lead, the jury, being of opinion that he obtained possession of the house with intent to steal the lead, found him guilty; and he afterwards had judgment. (*R. v. Munday*, 2 Leach, 850; 2 East's P. C. 594.)

A prisoner, however, cannot, upon an indictment for this statutable felony, be convicted of simple larceny. (*Reg. v. Gooch*, 8 C. & P. 293; *R. v. Millar*, 7 C. & P. 665; *Reg. v. Rice*, *supra*.)

As to larceny by tenants and lodgers, see the 74th section of the Act. *post*, 264.

Trees in pleasure grounds of the value of £1, or elsewhere of the value of £5.

By sect. 32, "Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing in any park, pleasure ground, garden, orchard, or avenue, or in any ground adjoining or belonging to any dwelling-house, shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of one pound) be guilty of felony, and being convicted thereof shall be liable to be punished as in the case of simple larceny; and whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, respectively growing

elsewhere than in any of the situations in this section before mentioned, shall (in case the value of the article or articles stolen, or the amount of the injury done, shall exceed the sum of five pounds) be guilty of felony, and, being convicted thereof, shall be liable to be punished as in the case of simple larceny."

See sect. 4, *ante*, 228.

The words "grounds adjoining" mean ground in actual contact with the dwelling house. (*R. v. Hodges*, 1 *Moo. C.C.* 341.) Whether the ground be a park or garden, etc., is a question for the jury. (*Ib.*) It seems it is not material that it should be in every part of it a park or garden, etc. (*Ib.*)

The "amount of injury" mentioned in this and the following section of the Act must be the actual injury to the tree or shrub itself, and not the consequential injury resulting from the act of the defendant. (*Reg. v. Whiteman*, *Dears. C.C.* 353.)

By sect. 33, "Whosoever shall steal, or shall cut, break, root up, or otherwise destroy or damage with intent to steal, the whole or any part of any tree, sapling, or shrub, or any underwood, wheresoever the same may be respectively growing, the stealing of such article or articles, or the injury done, being to the amount of a shilling at the least, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the article or articles stolen, or the amount of the injury done, such sum of money not exceeding five pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall for such second offence be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding twelve months as the convicting justice shall think fit; and whosoever, having been twice convicted of any such offence (whether both or either of such convictions shall have taken place before or after the passing of this Act), shall afterwards commit any of the offences in this section before mentioned, shall be guilty of felony, and, being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

If a tree or shrub under the value of 1s. be stolen, it seems that there is no punishment, either on summary conviction or otherwise. (*Car. C. L.* 315.) *Sed quære*, if the party might not be convicted under the Malicious Injuries Act (24 & 25 Vict. c. 97), tit. "*Malicious Injuries to Property*," *post*.

By sect. 34, "Whosoever shall steal, or shall cut, break, or throw down with intent to steal, any part of any live or dead fence, or any wooden post, pale, wire, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively, shall, on conviction thereof before a justice of the peace, forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding five pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour, for such term not exceeding twelve months as the convicting justice shall think fit."

By sect. 35, "If the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof, being of the value of

(i) *Larceny of Things Attached to Land.*

Where growing.

"Amount of injury."

Stealing trees, shrubs, etc., wheresoever growing, and of any value above 1s., punishable on summary conviction for first and second offence; third offence, felony.

Second offence.

Third offence.

Value.

Stealing, etc., any live or dead fence, wooden fence, stile, or gate.

Second offence.

Suspected persons in possession of wood, etc.,

(j) *Larceny from Mines.*

not satisfactorily  
accounting for it.

one shilling at the least, shall be found in the possession of any person, or on the premises of any person, with his knowledge, and such person, being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by the same, he shall, on conviction by the justice, forfeit and pay, over and above the value of the article or articles so found, any sum not exceeding two pounds."

Value.

By the repealed section of the 7 & 8 Geo. 4, c. 29, s. 36, corresponding to s. 35 of the present Act, the articles must have been of the value of two shillings, and must have been found by virtue of a search warrant.

Found in possession.

As to the meaning of "found in possession," see *Reg. v. Sunley*, (*Bell C. C.* 145), and *Reg. v. Sleep* (*Leigh & Cave C. C.* 44).

Stealing, etc., any fruit or vegetable production in a garden, etc., punishable on summary conviction for first offence;

By sect. 36, "Whosoever shall steal, or shall destroy or damage with intent to steal, any plant, root, fruit, or vegetable production growing in any garden, orchard, pleasure ground, nursery ground, hothouse, greenhouse, or conservatory, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months, or else shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding twenty pounds as to the justice shall seem meet; and whosoever, having been convicted of any such offence, either against this or any former Act of Parliament, shall afterwards commit any of the offences in this section before mentioned, shall be guilty of felony, and being convicted thereof, shall be liable to be punished in the same manner as in the case of simple larceny."

Second offence, felony.

"Plant."

The words "plant" and "vegetable production" do not apply to young fruit trees. (*R. v. Hodges*, 1 *Moo. C. C.* 341.) Stealing trees is punishable under ss. 32 or 33, *ante*, 240, 241.

Stealing, etc., vegetable productions not growing in gardens, etc.

By sect. 37, "Whosoever shall steal, or shall destroy or damage with intent to steal, any cultivated root or plant used for the food of man or beast, or for medicine, or for distilling, or for dyeing, or for or in the course of any manufacture, and growing in any land, open or inclosed, not being a garden, orchard, pleasure ground, or nursery ground, shall, on conviction thereof before a justice of the peace, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding one month, or else shall forfeit and pay, over and above the value of the article or articles so stolen, or the amount of the injury done, such sum of money not exceeding twenty shillings as to the justice shall seem meet, and, in default of payment thereof, together with the costs (if ordered), shall be committed as aforesaid for any term not exceeding one month, unless payment be sooner made; and whosoever, having been convicted of any such offence either against this or any former Act of Parliament, shall afterwards commit any of the said offences in this section before mentioned, and shall be convicted thereof in like manner, shall be committed to the common gaol or house of correction, there to be kept to hard labour for such term not exceeding six months as the convicting justice shall think fit."

Second offence.

"Cultivated plant."

Clover has been held to be a cultivated plant (*Reg. v. Brunsby*, 3 *C. & K.* 315); but it was doubted whether grass was so. (*Morris v. Wise*, 2 *F. & F.* 51.)

## (j) LARCENY FROM MINES.

Ore of metal, coal, etc.

By sect. 38, "Whosoever shall steal, or sever with intent to steal, the ore of any metal, or any lapis calaminaris, manganese or mundick, or

any wad, black cawke, or black lead, or any coal or cannel coal, from any mine, bed, or vein thereof respectively, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement." (k) *Larceny from the Person, etc.*

By sect. 39, "Whosoever, being employed in or about any mine, shall take, remove, or conceal any ore of any metal, or any lapis calaminaris, manganese, mundick, or other mineral found or being in such mine, with intent to defraud any proprietor of or any adventurer in such mine, or any workman or miner employed therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Miners removing ore with intent to defraud.

We have seen that, to constitute larceny at common law, the goods taken must be mere personal goods, *ante*, 216. If the personal goods savour anything of the realty, it cannot be larceny. They ought to be no way annexed to the freehold; therefore it is no larceny, but a bare trespass, to steal corn or grass growing or apples on a tree. But it is larceny to take them being severed from the freehold, as wood cut, grass in cocks, stones digged out of the quarry; and this, whether they are severed by the owner or even by the thief himself, if he sever them at one time, and then come again at another time and take them. (1 *Hawk. c. 33, s. 21*; 1 *Hale*, 510.) *Gibbs, C.J.*, in the case of *Lee v. Risdon* (7 *Taunt.* 191; 2 *Marsh*, 495), lays down the following doctrine: "If a thief severs a copper, and instantly carries it off, it is no felony at common law; if, indeed, he lets it remain after it is severed any time, then the removal of it becomes a felony, if he comes back and takes it; and so of a tree which has been some time severed."

At common law, no larceny.

This common law principle has been extended by various enactments, and finally by the above sections.

It is not larceny for miners employed to bring ore to the surface, and paid according to the quantity produced, to remove from the heaps of other miners ore produced by them, and to add it to their own, in order to increase their wages, the ore still remaining in the possession of the owners. (*R. v. Webb*, 1 *Moo. C. C.* 421. See also *Reg. v. Holloway*, 1 *Den. C. C.* 370; *Reg. v. Poole, Dears. & B. C. C.* 345; where the same principle is maintained.) In such a case, therefore, the offenders should be indicted under sect. 39.

It must be alleged and proved that the ore was stolen from the mine. (*Reg. v. Trevenner*, 2 *M. & Rob.* 476.)

As to malicious injuries to mines, see the 24 & 25 Vict. c. 97, ss. 11, 12, 28, 29; tit. "*Malicious Injuries to Property*," *post*.

#### (k) LARCENY FROM THE PERSON, AND OTHER LIKE OFFENCES.

By sect. 40, "Whosoever shall rob any person, or shall steal any chattel, money, or valuable security from the person of another, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Robbery or stealing from the person.

As to "valuable security," see sects. 1 and 27, *ante*, 226, 236.

Robbery from the person is a felonious taking of money or goods of any value from the person of another or in his presence, against his will, by violence, or putting him in fear. (2 *East, P. C. c.* 16, s. 124, p. 707; 4 *Blackst. Com.* 243. See tit. "*Robbery*," *Vol. V.*)

At common law.

To constitute robbery, and not a mere stealing from the person, there must be violence used, either immediately before, or at the time of, the

Violence must be used at the time.



(k) *Larceny from the Person, etc.*

taking of the property, and not afterwards. (*Smith's case*, 1 *Lew.* 301; *R. v. Guvstil*, 1 *C. & P.* 304. But see now, sect. 43, *infra*.)

As to what is a "felonious taking," or what "against the will," or "by violence or putting in fear," see tit. "*Robbery*," Vol. V.

Robbing several one robbery.

The defendant may be charged in one indictment with robbing several persons, if the whole was one transaction. (*Reg. v. Giddins*, *Car. & M.* 634.)

There must be a severance from the person.

The property must be severed from the person of the prosecutor; a mere removal of it from one part of his person to another is not sufficient to constitute this offence. (*R. v. Thompson*, 1 *Moo. C. C.* 78; *Reg. v. Simpson*, *Dears. C. C.* 41.)

But the prisoner in such a case might be found guilty of an assault with intent to rob, under the next section.

On trial for robbery, jury may convict of an assault with intent to rob.

By sect. 41, "If, upon the trial of any person upon any indictment for robbery, it shall appear to the jury upon the evidence that the defendant did not commit the crime of robbery, but that he did commit an assault with intent to rob, the defendant shall not by reason thereof be entitled to be acquitted; but the jury shall be at liberty to return as their verdict that the defendant is guilty of an assault with intent to rob; and thereupon such defendant shall be liable to be punished in the same manner as if he had been convicted upon an indictment for feloniously assaulting with intent to rob; and no person so tried as is herein lastly mentioned shall be liable to be afterwards prosecuted for an assault with intent to commit the robbery for which he was so tried."

Aggravated robbery.

Where an aggravated robbery is charged, the jury may find the prisoner guilty of an aggravated assault with intent to rob. (*Reg. v. Mitchell*, 2 *Den. C. C.* 468; *Dears. C. C.* 19, n.)

Assault with intent to rob.

By sect. 42, "Whosoever shall assault any person with intent to rob shall be guilty of felony, and, being convicted thereof, shall (save and except in the cases where a greater punishment is provided by this Act) be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

The following section inflicts a severer punishment in cases of assaults with intent to rob, where the prisoner was armed, or was in company with others, or used violence.

What is an assault with intent to rob.

Assaulting and threatening to charge with an infamous crime with intent to extort money is an assault with intent to rob. (*Reg. v. Stringer*, 2 *Moo. C. C.* 261. See *Reg. v. Reid*, 2 *Den. C. C.* 89.) Where an aggravated robbery is charged, the jury may find an aggravated felonious assault. (*Reg. v. Mitchell*, 2 *Den. C. C.* 468; *Dears. C. C.* 19, n.) No actual demand of money is necessary to complete the offence. (*R. v. Trusty*, 1 *East, P. C.* 448; *R. v. Sherwin*, *Ib.* 421.) A count for attempting to steal may be joined with a count for assaulting with intent to rob. (*Reg. v. Ferguson*, *Dears. C. C.* 427.)

A count for attempting to steal may be added.

Robbery or assault by a person armed, or by two or more, or robbery and wound.

By sect. 43, "Whosoever shall, being armed with any offensive weapon or instrument, rob, or assault with intent to rob, any person, or shall, together with one or more other person or persons, rob, or assault with intent to rob, any person, or shall rob any person, and, at the time of or immediately before or immediately after such robbery, shall wound, beat, strike, or use any other personal violence to any person, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

By the 26 & 27 Vict. c. 44, reciting this section and sect. 21 of the 24 & 25 Vict. c. 100, in addition to the punishment awarded by these sections, the Court may direct that the offender, if a male, be once, twice, or thrice privately whipped, subject to the following provisions:—

(1) *Threatening Letters, etc.*

1. That, in case of an offender whose age does not exceed sixteen years, the number of strokes at each such whipping do not exceed twenty-five, and the instrument used shall be a birch rod.

2. That, in the case of any other male offender, the number of strokes do not exceed fifty at each such whipping.

3. That, in each case, the Court in its sentence shall specify the number of strokes to be inflicted, and the instrument to be used.

Provided, that in no case shall such whipping take place after the expiration of six months from the passing of the sentence: Provided also, that every such whipping to be inflicted on any person sentenced to penal servitude shall be inflicted on him before he shall be removed to a convict prison with a view to his undergoing his sentence of penal servitude.

If the offence is committed by several, one of whom is armed, to the knowledge of the others, all may be convicted. (See *R. v. Smith, R. & R. C. C.* 386.)

One being armed out of several is sufficient.

A stick or bludgeon is an "offensive weapon" (*R. v. Palmer, 1 Moo. C. C.* 70; *R. v. Fry, 2 Moo. C. C.* 42; *Reg. v. Turner, 2 Cox, C. C.* 304); and so are large stones. (*R. v. Grice, 7 Car. & P.* 803.)

"Offensive weapon."

#### (l) THREATENING LETTERS, ETC.

By the 24 & 25 Vict. c. 96, s. 44, "Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing demanding of any person with menaces, and without any reasonable or probable cause, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

Letter demanding money, etc., with menaces.

As to "property," see sect. 1, *ante*, 226.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

The words "cause to be received" will include all those cases which have given rise to doubts as to whether the circumstances did or did not amount to a sending, *e.g.*, the sending to A. in order that he may deliver it to B. (*R. v. Saddle, R. & R. C. C.* 484); the leaving a letter directed to A. near his house, with the intention that it should be seen by B. (*Reg. v. Grimwade, 1 Den. C. C.* 30); the dropping a letter directed to A. in a place where he was likely to pick it up (*R. v. Lloyd, 2 East, P. C.* 1123; *R. v. Wagstaff, R. & R. C. C.* 398); or the receiving a letter in the defendant's handwriting through the post. (*R. v. Hemming, 2 East, P. C.* 1116; *R. v. Jepson, Ib.* 1115; *R. v. Gushwood, Ib.* 1120.)

A mere request, as a begging letter, is not within the statute, unless it is accompanied by a threat in case it is not complied with, so as, although in form a request, virtually to amount to a demand. (*R. v. Robinson, 2 East, P. C.* 1110.) An offer to give information of an intended injury to the prosecutor if money is sent, has been held not to be within the statute. (*R. v. Pickford, 4 Car. & P.* 227.) But perhaps that case was decided upon grounds which are removed by sect. 49, *post*, 248. But a statement that an injury is intended, and that the writer, although he can do so, will not avert it unless money is sent, is a demanding with menaces. (*Reg. v. Smith, 1 Den. C. C.* 510.)

The demand.

(1) *Threatening Letters, etc.*

The words "without any reasonable or probable cause" apply to the demanding. (*R. v. Gardner*, 1 *Car. & P.* 479; *Reg. v. Hamilton*, 1 *Car. & K.* 212.)

Demanding money, etc., with menaces or by force, with intent to steal.

By sect. 45, "Whosoever shall with menaces or by force demand any property, chattel, money, valuable security, or other valuable thing of any person, with intent to steal the same, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

As to "property," see sect. 1, *ante*, 226.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

The menaces must be of a character to produce in a reasonable man some degree of alarm or bodily fear, or to unsettle the mind of the person upon whom it operates, and take away from his acts that element of free voluntary action which alone constitutes consent. (*Reg. v. Walton*, 1 *& C.* 288; 32 *L. J., M. C.* 79.)

The money must be demanded from the person.

An allegation that the defendant demanded *the moneys of J. N.* is insufficient, as not showing that the money was demanded *from J. N.* (*R. v. Dunkley*, 1 *Moo. C. C.* 90.)

Demand.

The offence is complete, although the party threatened has no money in his possession; but demanding money of B., *knowing* that it is not then in his possession, with intent to obtain an order for the payment of it, is not within this section. (*R. v. Edwards*, 6 *Car. & P.* 515.) The prisoner may be convicted, although the threats are not uttered until after the money has been demanded and refused. (*Reg. v. Taylor*, 1 *F. & F.* 511.)

A conviction under this section is good, although the money has been actually obtained. (*Reg. v. Robertson*, *L. & C.* 483.)

A threat to imprison, even for a crime unknown to the law, is a menace within this section. (*Ib.*)

Letter threatening to accuse of crime, with intent to extort.

By sect. 46, "Whosoever shall send, deliver, or utter, or directly or indirectly cause to be received, knowing the contents thereof, any letter or writing accusing or threatening to accuse any other person of any crime punishable by law with death or penal servitude for not less than seven years, or of any assault with intent to commit any rape, or of any attempt or endeavour to commit any rape, or of any infamous crime as hereinafter defined, with a view or intent in any of such cases to extort or gain by means of such letter or writing any property, chattel, money, valuable security, or other valuable thing, from any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping; and the abominable crime of buggery, committed either with mankind or with beast, and every assault with intent to commit the said abominable crime, and every attempt or endeavour to commit the said abominable crime, and every solicitation, persuasion, promise, or threat offered or made to any person whereby to move or induce such person to commit or permit the said abominable crime, shall be deemed to be an infamous crime within the meaning of this Act."

"Infamous crime" defined.

As to "property," see sect. 1, *ante*, 226.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

What is an accusation.

A threat to procure witnesses to prove a charge for which the prosecutor is indicted or in custody, is not within the statute. (*R. v. Gill*, 1 *Arch. P. A.* 302.) It is immaterial whether the accusation is true or not (*R. v. Gardner*, 1 *Car. & P.* 479; *Reg. v. Hamilton*, 1 *Car. & K.*

212); and evidence of its truth will not be admitted, though the prosecutor's credit may be tested by asking him questions suggesting his guilt. (*R. v. Cracknell*, 10 *Cox*, *C. C.* 408.)

If the letter is obscure, parol evidence is admissible to prove what charge was intended. (*R. v. Tucker*, 1 *Moo. C. C.* 134; *Reg. v. Middle-ditch*, 1 *Den. C. C.* 92.) The accusation need not be specified in the indictment. (*Ib.*)

Where the intent laid is to extort money, and the intent proved is to extort a bill of exchange, the variance will be fatal unless amended. (*R. v. Major*, 2 *East*, *P. C.* 1118.)

By sect. 47, "Whosoever shall accuse or threaten to accuse, either the person to whom such accusation or threat shall be made or any other person, of any of the infamous or other crimes lastly hereinbefore mentioned, with the view or intent in any of the cases last aforesaid to extort or gain from such person so accused or threatened to be accused, or from any other person, any property, chattel, money, valuable security, or other valuable thing, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping."

As to "property," see sect. 1, *ante*, 226.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

It need not be a threat to accuse before a judicial tribunal; a threat to charge before any third person is sufficient. (*R. v. Robinson*, 2 *Moo. C. C.* 14.) It is immaterial whether the party accused is guilty or innocent of the crime imputed to him. (*R. v. Gardner*, 1 *Car. & P.* 479.)

Where the property is parted with under threats to accuse other than those named in the statute, the defendant may be indicted for robbery, if the prosecutor was put in fear and parted with the property in consequence. (*Reg. v. Norton*, 8 *Car. & P.* 671.) The jury need not confine themselves to the consideration of the expressions used by the prisoner before the money was given; but, if those expressions are equivocal, may connect them with what was afterwards said by him when he was taken into custody. (*Reg. v. Cain*, 8 *Car. & P.* 187.)

Where the prisoner had threatened to accuse the prosecutor's son of an abominable crime, if he (the prosecutor) would not buy a mare of him, and there was no evidence to show that the mare was not worth the price asked, and he was convicted, the Court held the conviction right. (*Reg. v. Redman*, 35 *L. J., M. C.* 89.)

By sect. 48, "Whosoever, with intent to defraud or injure any other person, shall, by any unlawful violence to or restraint of, or threat of violence to or restraint of, the person of another, or by accusing or threatening to accuse any person of any treason, felony, or infamous crime as hereinbefore defined, compel or induce any person to execute, make, accept, indorse, alter, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or copartnership, or the seal of any body corporate, company, or society, upon or to any paper or parchment, in order that the same may be afterwards made or converted into, or used or dealt with as, a valuable security, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

(1) *Threatening Letters, etc.*

It need not be stated.

Variance.

Accusing or threatening to accuse, with intent to extort.

The accusation.

Where the threats are to accuse of other crimes, the indictment may be for robbery.

Evidence of effect of threats.

Inducing a person by violence or threats to execute deeds, etc., with intent to defraud.

(m) *Sacrilage, etc.*

This section will meet such a case as that of *R. v. Edwards* (6 *Car. & P.* 521), where the decoying the prosecutor into a house, chaining him down to a seat, and compelling him to write orders for the payment of money and the delivery of deeds, was held not to be an assault with intent to rob; and that of *R. v. Phipor* (2 *Leach, C. C.* 673), where the compelling the prosecutor by duress to sign a promissory note, previously prepared by the defendant, was held not to be larceny.

It shall be immaterial from whom the menaces proceed.

By sect. 49, "It shall be immaterial whether the menaces or threats herein-before mentioned be of violence, injury, or accusation to be caused or made by the offender or by any other person."

This clause will meet those cases where a letter contains threats by another person, or where property is demanded by menaces of violence to be used by another person. (See *R. v. Pickford*, 4 *C. & P.* 227; *Reg. v. Smith*, 1 *Den. C. C.* 510.)

#### (m). SACRILEGE, BURGLARY, AND HOUSEBREAKING.

Breaking and entering a church or chapel and committing any felony.

By sect. 50, "Whosoever shall break and enter any church, chapel, meeting house, or other place of divine worship, and commit any felony therein, or being in any church, chapel, meeting house, or other place of divine worship, shall commit any felony therein and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

It is to be observed that the present section includes "any felony" committed, and not merely a larceny; and therefore the difficulties which arose in such cases as *Reg. v. Nixon* (7 *C. & P.* 442), and *Reg. v. Baker* (3 *Cox, C. C.* 581), are obviated.

As to breaking and entering any church, etc., with intent to commit a felony, see sect. 57, *post*, 251.

The vestry and the tower are part of a church.

Breaking into the vestry is within the statute. (*Reg. v. Evans, Car. & M.* 298.)

So also, where articles were stolen from the tower of a church, and the tower had no separate door, but the only way to it was through the church, it was held to be a stealing in the church within the meaning of the 7 & 8 *Geo. 4, c. 29, s. 10.*

Dissenting chapels.

The words "meeting house" would seem to extend the protection of the statute to dissenting chapels, which are not *chapels* within the meaning of the Act. (*R. v. Warren*, 6 *Car. & P.* 335, n.; *R. v. Nixon*, 7 *Car. & P.* 442.)

Property in the goods stolen.

The goods in a dissenting chapel vested in trustees cannot be described as the goods of a servant who has merely the custody of the chapel and the things in it, although he has the key of the chapel, and no other person but the minister has another key. (*R. v. Hutchinson, R. & R. C. C.* 412.) The property in books given to a society of Wesleyans may be laid in one of the society and others. (*R. v. Boulton*, 5 *Car. & P.* 537.) Money stolen from a box affixed to the wall of a church may be described as the property of the vicar and churchwardens in their individual names. (*Reg. v. Worthy*, 1 *Den. C. C.* 162.)

Burglary by breaking out.

By sect. 51, "Whosoever shall enter the dwelling house of another with intent to commit any felony therein, or being in such dwelling house shall commit any felony therein, and shall in either case break out of the said dwelling house in the night, shall be deemed guilty of burglary."

As to principals in the second degree and accessories, see *tit.* "Burglary" and "Accessories," *Vol. I.*

As to what is a dwelling house or curtilage under this section and sect. 53, see tit. "*Burglary*," Vol. I., and sects. 53 & 55, *infra*; and see there also as to ownership of the dwelling house.

As to what is to be considered as the "night," see sect. 1, *ante*, 226, and tit. "*Burglary*," Vol. I.

The section includes any felony and not merely larceny.

As to what is a sufficient breaking and entering to constitute either this offence, or the offences of breaking and entering and stealing in a dwelling house, etc., under the following sections, see the points noticed under tit. "*Burglary*," Vol. I., which will be here applicable.

The defendant may be convicted under this section, although the offence amounts to burglary. (*R. v. Pearce*, R. & R. C. C. 174; *R. v. Robinson*, R. & R. C. C. 321.) An indictment stating that the prisoner did "break to get out," or "did break and get out," is bad, as not following the words of the statute. (*R. v. Compton*, 7 Car. & P. 139.)

It has been held that escaping from a house by lifting a heavy flap-door, which had no fastening, but was kept down by its own weight, is not a breaking out of a house. (*R. v. Lawrence*, 4 Car. & P. 281.) But see *R. v. Russell* (1 Moo. C. C. 377), which, unless there be some distinction between a "breaking in" and a "breaking out," seems to overrule this case. The defendant may be convicted, although he was lawfully in the house, as a lodger, or a guest in an inn. (*Reg. v. Wheeldon*, 8 Car. & P. 747.)

By sect. 52, "Whosoever shall be convicted of the crime of burglary shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Burglary.

The minimum term of penal servitude will now be five years. See the 27 & 28 Vict. c. 47, s. 2, *ante*, 228.

By sect. 53, "No building, although within the same curtilage with any dwelling house, and occupied therewith, shall be deemed to be part of such dwelling house for any of the purposes of this Act, unless there shall be a communication between such building and dwelling house, either immediate, or by means of a covered and inclosed passage leading from the one to the other."

What building within the curtilage shall be deemed part of the dwelling house.

As to what is a dwelling house or curtilage, see also tit. "*Burglary*," Vol. I., and the notes to sect. 55, *post*, 250.

If there is such a communication as is mentioned in the section, the indictment may charge the breaking into, etc., of the outhouse as a breaking into, etc., of the dwelling house. (*R. v. Garland*, 1 East, P. C. 493, 572.) Where a wash-house was under the same roof as the dwelling house, with which, however, it had no internal communication, it was held to be a part of the dwelling house. (*R. v. Burrows*, 1 Moo. C. C. 274.) But it would have been otherwise, if it had not been under the same roof, although leaning to and supported by the dwelling house. (*Reg. v. Higgs*, 2 Car. & K. 322; *R. v. Eggington*, 2 Bos. & P. 508.) The building must be occupied by the occupier of the house. A building occupied by A. and B., although communicating with a house occupied by A., cannot be considered as part of A.'s house. (*R. v. Jenkins*, R. & R. C. C. 224.)

What is a communication between the building and dwelling house.

By sect. 54, "Whosoever shall enter any dwelling house in the night, with intent to commit any felony therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Entering a dwelling house in the night with intent to commit any felony.

(m) *Sacri-  
lege*, etc.

(m) *Sacrilege, etc.*

As to what is a "dwelling house" and what the "night," see tit. "*Burglary*," Vol. I.

This section does not apply to a breaking, nor to an actual felony committed, as to which see the next section.

Breaking into any building within the curtilage which is no part of the dwelling house and committing any felony.

By sect. 55, "Whosoever shall break and enter any building, and commit any felony therein, such building being within the curtilage of a dwelling house, and occupied therewith, but not being part thereof according to the provisions herein-before mentioned, or being in any such building shall commit any felony therein, and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

This section includes a breaking and entering by day as well as by night.

If upon an indictment under this section, or for burglary, the evidence fail to prove the breaking or the committing of the felony, a conviction may take place under the preceding section.

What is within the curtilage.

A building within the fold-yard, which communicated with the dwelling house by means of the pump-yard, from which it was divided by a wall four feet high, in which was a gate, and which was bounded by the farm buildings, a wall running from the house, a hedge and gates, was held to be within the curtilage. (*Reg. v. Gilbert*, 1 Car. & K. 84.)

Formerly, any building within the curtilage, although not communicating with the dwelling house in the manner mentioned in sect. 53, *ante*, 249, was considered to be part of the dwelling house for purposes of burglary or housebreaking; and it would therefore seem that any building formerly held to be a part of the dwelling house, but not so communicating therewith, would now be considered to be within the curtilage for the purposes of this section. Under this view, buildings have been held to be part of the dwelling house when their walls formed part of one continuous wall surrounding the dwelling house (*R. v. Hancock*, R. & R. C. C. 170); or when they had doors opening into the yard surrounding the house (*R. v. Chalking*, R. & R. C. C. 334; *R. v. Clayburn*, *Ib.* 360; *R. v. Walters*, 1 Moo. C. C. 13); or when they were enclosed with the dwelling house in one common yard. (*R. v. Lithgo*, R. & R. C. C. 357.) But a building separated from the house by a public thoroughfare has been held not to be a part of the dwelling house. (*R. v. Westwood*, *Ib.* 495.) And so have a wall, gate, or other fence, part of the outward fence of the curtilage (*R. v. Bennett*, *Ib.* 289), and the gate of an area, leading only into the area, there being a door or fastening to prevent persons from passing from the area into the house. (*R. v. Davis*, *Ib.* 322.)

Breaking into any house, shop, warehouse, etc., and committing any felony.

By sect. 56, "Whosoever shall break and enter any dwelling house, school-house, shop, warehouse, or counting-house, and commit any felony therein, or, being in any dwelling house, schoolhouse, shop, warehouse, or counting-house, shall commit any felony therein, and break out of the same, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years, and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

As to what is a "dwelling house" and what is a "breaking and entering," see tit. "*Burglary*," Vol. I.

And see sects. 51, 53, 55, *supra*.

The offence committed in the house or shop may be "any felony."

If the breaking be not proved, the prisoner may yet be convicted of the felony. (*R. v. Compton*, 3 C. & P. 418.)

The defendant may be convicted under this section, although the offence proved amount to a burglary. (*R. v. Pearce, R. & R. C. O.* 174; *R. v. Robinson, Ib.* 321.) There must be a breaking and entering: where the prosecutor, in consequence of the threats of an armed mob, fetched provisions out of his house, and gave them to the mob, who stood outside the door, it was held that no offence had been committed within the similar sect. 12 of the 7 & 8 Geo. 4, c. 29. (*Reg. v. Leonard, Arch. Crim. Plead.* 14th edit. p. 339.)

The former offence of privately stealing in a shop no longer exists.

As to breaking into the shops, etc., of the British Plate Glass Company, and stealing therein, see the 13 Geo. 3, c. 38, tit. "*Malicious Injuries to Property*," *post*.

As to breaking into the shops, etc., of the British Linen Company, see the 4 Geo. 3, c. 37, s. 16, tit. "*Malicious Injuries to Property*," *post*. Shops.

In an indictment against a servant of the West India Dock Company for stealing a quantity of canvas and hessen belonging to the company from their warehouses, it was held sufficient to state the property to be "the goods and chattels of the West India Dock Company," and not necessary, notwithstanding the words of the 1 & 2 Will. 4, c. 11, s. 133, to allege in addition that it was feloniously taken from the said company. (*Reg. v. Stokes, 8 C. & P.* 151; *per Mirehouse, C. S.*)

But an indictment under the 24 & 25 Vict. c. 96, s. 56, for stealing in a shop, etc., must allege that the prisoner stole the goods therein; an averment that the goods were in the shop and that the prisoner stole them is not enough. (*Reg. v. Smith, 2 M. & Rob.* 115; *per Patteson, J.*)

And it was formerly holden, upon the 7 & 8 Geo. 4, c. 29, that a shop, to be within that Act, must be a shop for the sale of goods, and that a mere workshop (such as a carpenter's or blacksmith's shop) would not be sufficient. (*Reg. v. Sanders, 9 C. & P.* 79.)

But it has since been ruled by Lord Denman, C.J., that a person who broke into a blacksmith's shop, and stole goods there, might be convicted under that Act. (*Reg. v. Carter, 1 C. & K.* 173.) And it may, therefore, be now taken that the word "shop" includes a mere workshop as well as a shop for the sale of goods. (See also *Reg. v. Potter, 2 Den. C. C.* 235; 20 *L. J., M. C.* 170.)

It was held that the goods stolen must be the actual property of the owner of the shop, or at least goods exposed by him for sale. (*R. v. Stone, 1 Leach, 334*; 2 *East, P. C.* 642.) So also it was held that a warehouse kept for safe custody of goods merely was not within the old statute relating to this offence. But now it is decided that such a warehouse is within the present statute. (*Reg. v. Hill, 2 M. & Rob.* 458.)

The words of the repealed section were "steal any chattel, money, or valuable security."

"Commit any felony therein."

On an indictment for breaking and entering a house and stealing certain specified goods, the defendant cannot be convicted of breaking and entering and attempting to steal the goods specified, they not being in the house at the time; for an attempt must be to do that which if successful would amount to the offence charged; but here the attempt never could have succeeded, as the articles in question were not in the house. (*Reg. v. M'Pherson, Dears. & B.* 197. See also *Reg. v. Johnson, 34 L. J., M. C.* 24; and *Reg. v. Collins, 34 L. J., M. C.* 177.)

There cannot be an attempt to steal goods not in the house.

By sect. 57, "Whosoever shall break and enter any dwelling house, church, chapel, meeting house, or other place of divine worship, or any building within the curtilage, schoolhouse, shop, warehouse, or counting-house, with intent to commit any felony therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court,

House breaking, etc., with intent to commit any felony.



(m) *Sacri-  
lege, etc.*

to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

As to what is a "dwelling house" and "curtilage," and what is a "breaking and entering," see tit. "*Burglary*," Vol. I., and sects. 51, 53, 55, *ante*, 248-250.

As to what is a church, chapel, or meeting house, etc., see sect. 50, *ante*, 248, and for "shop," etc., see the preceding section.

Being armed  
with intent to  
break and enter  
any house in the  
night.

By sect. 58, "Whosoever shall be found by night armed with any dangerous or offensive weapon or instrument whatsoever, with intent to break or enter into any dwelling house or other building whatsoever, and to commit any felony therein, or shall be found by night having in his possession without lawful excuse (the proof of which excuse shall lie on such person) any picklock key, crow, jack, bit, or other implement of housebreaking, or shall be found by night having his face blackened or otherwise disguised with intent to commit any felony, or shall be found by night in any dwelling house or other building whatsoever with intent to commit any felony therein, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three years, or to be imprisoned for any term not exceeding two years, with or without hard labour."

Found by night.

The prisoner must be "found by night;" but it is not necessary he should have "entered by night," as he must under sect. 54. He may therefore be found by night under this section in a house which he has entered by day.

"Picklock key."

It has been supposed that the punctuation in the repealed enactment was mistaken, and that a comma ought to have been inserted between the words "picklock" and "key." (See the observations of *Maule, J.*, *Reg. v. Oldham*, 2 Den. C. C. 472.) The present statute, however, adheres to the mode of punctuation observed upon.

"Implement of  
housebreaking."

A key is an implement of housebreaking. (*Reg. v. Holham*, 2 Den. C. C. 472.) So is any instrument whatever, although ordinarily used for lawful purposes, if it was the intention of the defendant to use it for housebreaking purposes. (*Ib.*)

Unnecessary to  
prove intent.

Where the prisoner is indicted for having implements of housebreaking in his possession, it is unnecessary to allege or prove an intent to commit felony (*a*). (*Reg. v. Bailey, Dears. C. C. 244.*) Where the intent is to steal, it is not necessary to state the ownership of the property intended to be stolen. (*Reg. v. Lawes*, 1 Car. & Kir. 62.)

(a) The case of *Reg. v. Jarrold, Leigh & Cave*, C. C. 301, appears to be in some degree opposed to this decision; and it is doubted by Mr. *Greaves*, in *Russell on Crimes*, vol. 2, 4th edit., p. 138, whether this case is rightly decided; but a close consideration of the statute appears to confirm it. It may well be that, in all the other cases except "having implements of housebreaking," an intent must be clearly proved; for the "being armed with a dangerous weapon," or "having the face blacked," or "being by night in a dwelling-house," are clearly no offences unless done for a felonious purpose, and the

very essence of the offence is such felonious purpose. But, with regard to "having instruments of housebreaking," the statute implies the intent from the nature of the instrument, and throws the proof of innocence upon the prisoner. The general intention of the statute is thus well carried out. For, if a man be found by night anywhere with housebreaking implements, or such as the jury shall think he intended to use as such (see *R. v. Oldham*, 2 Den. C. C. 472, *supra*), he may be indicted for that offence; but, if he has not any housebreaking implements, but is "armed with a dangerous weapon"

By sect. 59, "Whosoever shall be convicted of any such misdemeanour as in the last preceding section mentioned, committed after a previous conviction, either for felony or such misdemeanour, shall on such subsequent conviction be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding ten years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour."

(n) *Larceny in the House.*

The like, after a previous conviction for felony, etc.

The least term of penal servitude which can now be passed upon a prisoner is five years. Under this section, therefore, the punishment after a previous conviction for felony would range from seven years to ten years, but after a previous conviction for such misdemeanour from five years to ten years. See the 27 & 28 Vict. c. 47, s. 2, *ante*, 228.

#### (n) LARCENY IN THE HOUSE.

By sect. 60, "Whosoever shall steal in any dwelling house any chattel, money, or valuable security, to the value in the whole of five pounds or more, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Stealing in a dwelling house to the value of £5.

As to what is a "dwelling house," see tit. "*Burglary*," Vol. I., and sects. 53, 55, *ante*, 249, 250.

As to what is a "valuable security," see sect. 1, *ante*, 226, and the remarks upon sect. 27, *ante*, 236.

A stealing by the owner of the house is within the statute. (*Reg. v. Bowden*, 2 Moo. C. C. 285; *R. v. Taylor*, R. & R. C. C. 418. But see *R. v. Madox*, R. & R. C. C. 92.)

Stealing by owner.

To be within the section, the goods must be under the protection of the dwelling house, and not of the person. (*R. v. Campbell*, 2 Leach, C. C. 264; *R. v. Owen*, 2 East, P. C. 645.) Property left at a house for a person supposed to reside there is under the protection of the house (*R. v. Carroll*, 1 Moo. C. C. 89); and so are clothes, money, etc., placed by a person at his bedside on his going to bed. (*R. v. Thomas*, Car. Sup. 295; *R. v. Hamilton*, 8 Car. & P. 49.) Whether the goods are under the protection of the house or under the personal care of the owner is a question for the Court, and not for the jury. (*R. v. Thomas*, *ubi supra*.)

Goods must be under the protection of the dwelling house.

The goods stolen to the value of £5 must be stolen at one time to that value. (*R. v. Petrie*, 1 Leach, C. C. 294; *R. v. Hamilton*, *Ib.* 348; *R. v. Jones*, 4 Car. & P. 217; *R. v. Dunn*, 1 Moo. C. C. 146; *R. v. Smith*, *Ib.* 295.) In ascertaining the value, the jury may bring that general knowledge which any man may have; but, if a professional knowledge is required, the juryman who has such knowledge and proposes to use it must be sworn. (*R. v. Rosser*, 7 C. & P. 648.)

Value.

By sect. 61, "Whosoever shall steal any chattel, money, or valuable security in any dwelling house, and shall by any menace or threat put any one being therein in bodily fear, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Stealing in a dwelling house with menaces.

not usable for housebreaking, or has "his face blacked," or is "in a dwelling-house" without instruments

of housebreaking, then the particular intent must be laid, and proved as laid.

(p) *Larceny in Ships, etc.*

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.  
As to "dwelling house," see sects. 53, 55, *ante*, 249, 250, and tit. "*Burglary*," Vol. I.

"Fear."

It is to be observed that the "bodily fear" may be caused by words or gestures importing a menace. (*R. v. Jackson*, 1 *Leach*, C. C. 269; *R. v. Etherington*, 2 *Leach*, C. C. 671.) It must be alleged in the indictment that some person was put in fear by the defendant. (*Ib.*)

#### (o) LARCENY IN MANUFACTORIES.

Stealing goods in process of manufacture.

By sect. 62, "Whosoever shall steal, to the value of ten shillings, any woollen, linen, hempen, or cotton yarn, or any goods or article of silk, woollen, linen, cotton, alpaca, or mohair, or of any one or more of those materials mixed with each other, or mixed with any other material, whilst laid, placed, or exposed, during any stage, process, or progress of manufacture, in any building, field, or other place, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

"Stage of manufacture."

The goods are in a "stage of manufacture" though the texture is complete, if they are not yet in a condition to be sold. (*R. v. Woodhead*, 1 *Moo. C. C.* 549. But see *Hugill's case*, 4 *Blackst. Com.* 240 n. (8), *ed.* 1800.) See also as to other offences concerning goods of these descriptions, Vol. V. tit. "*Servants*."

#### (p) LARCENY IN SHIPS, WHARFS, ETC.

Stealing from ships, docks, wharfs, etc.

By sect. 63, "Whosoever shall steal any goods or merchandise in any vessel, barge, or boat of any description whatsoever, in any haven, or in any port of entry or discharge, or upon any navigable river or canal, or in any creek or basin belonging to or communicating with any such haven, port, river, or canal, or shall steal any goods or merchandise from any dock, wharf, or quay adjacent to any such haven, port, river, canal, creek, or basin, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

It would not be sufficient, in an indictment for stealing goods from any vessel on a certain navigable river, to prove in evidence that the vessel was aground in a dock, in a creek of the river, unless the indictment were amended. (*R. v. Pike*, 1 *Leach*, 417.)

The words of the statute are "*in any vessel*," etc.; and it is therefore immaterial whether the defendant succeeded in taking the goods from the ship or not, if there was a sufficient asportation in the ship to constitute larceny. A man cannot be guilty of this offence in his own ship. (*R. v. Madox*, *R. & R.* 92.)

The construction on the 22 Geo. 2, c. 45, was generally confined to such goods and merchandises as are usually lodged in ships, or on wharfs or quays. And, therefore, where George Grimes was indicted on this statute for stealing a considerable sum of money out of a ship in port; though great part of it consisted in Portugal money, not made current by proclamation, but commonly current; it was ruled not to be within the statute. (*R. v. Grimes*, *Fost.* 79. And see *R. v. Leigh*, 1 *Leach*, 52; 2 *East's P. C.* 647.) The same rule would apply to the present statute.

The property should be such as is usually deposited in ships or wharfs, and not attached to the person; for the same principle which governs the stealing in houses is equally applicable to places which this statute protects. (*Id.*, and see *ante*, 253.)

The luggage of a passenger going by a steamboat is within the meaning of the Act, as being "goods or merchandise." (*R. v. Wright*, 7 C. & P. 159.)

By sect. 64, "Whosoever shall plunder or steal any part of any ship or vessel which shall be in distress, or wrecked, stranded, or cast on shore, or any goods, merchandise, or articles of any kind belonging to such ship or vessel, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and the offender may be indicted and tried either in the county or place in which the offence shall have been committed, or in any county or place next adjoining."

Stealing from ship in distress or wrecked.

By sect. 65, "If any goods, merchandise, or articles of any kind, belonging to any ship or vessel in distress, or wrecked, stranded, or cast on shore, shall be found in the possession of any person, or on the premises of any person with his knowledge, and such person, being taken or summoned before a justice of the peace, shall not satisfy the justice that he came lawfully by the same; then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof; and the offender shall, on conviction of such offence before the justice, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months; or else shall forfeit and pay, over and above the value of the goods, merchandise, or articles, such sum of money not exceeding twenty pounds as to the justice shall seem meet."

Persons in possession of ship-wrecked goods not giving a satisfactory account.

By sect. 66, "If any person shall offer or expose for sale any goods, merchandise, or articles whatsoever, which shall have been unlawfully taken, or shall be reasonably suspected so to have been taken, from any ship or vessel in distress, or wrecked, stranded, or cast on shore, in every such case any person to whom the same shall be offered for sale, or any officer of the customs or excise, or peace officer, may lawfully seize the same, and shall with all convenient speed carry the same, or give notice of such seizure, to some justice of the peace; and, if the person who shall have offered or exposed the same for sale, being summoned by such justice, shall not appear and satisfy the justice that he came lawfully by such goods, merchandise, or articles, then the same shall, by order of the justice, be forthwith delivered over to or for the use of the rightful owner thereof, upon payment of a reasonable reward (to be ascertained by the justice) to the person who seized the same; and the offender shall, on conviction of such offence by the justice, at the discretion of the justice, either be committed to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, for any term not exceeding six months; or else shall forfeit and pay, over and above the value of the goods, merchandise, or articles, such sum of money, not exceeding twenty pounds, as to the justice shall seem meet."

If any person offers ship-wrecked goods for sale, the goods may be seized, etc.

And see sects. 478, 479, 520, of the Merchant Shipping Act, 17 & 18 Vict. c. 104, tit. "*Ships*," Vol. V., as to the penalties for removing any part of a ship in distress, or hindering the saving of the vessel, or secreting the wreck, or taking wreck into a foreign port and selling it, which last is made a felony.

(q) *Larceny or Embezzlement by Clerks, etc.*

Larceny by clerks or servants.

(q) LARCENY OR EMBEZZLEMENT BY CLERKS, SERVANTS, OR PERSONS IN THE PUBLIC SERVICE.

By sect. 67, "Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall steal any chattel, money, or valuable security belonging to or in the possession or power of his master or employer, shall be guilty of felony, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

As to what is a "valuable security," see sects. 1, 27, *ante*, 226, 236.

As to who is a "clerk" or "servant," see the following section.

Larceny by clerks or servants at common law.

We have already seen how far a clerk or servant may be guilty of larceny at common law, *ante*, 202, 203. We have also seen that, by the *common law*, he who had goods delivered to him, thereby originally gaining a legal possession of them, could not, by afterwards converting them to his own use with intent to steal, be deemed a felon and guilty of larceny. And it seems from 1 *Hale*, 505, that servants stood in the same situation in this respect as strangers, *ante*, 209-212.

To remedy these defects at *common law*, in respect of offences committed by clerks or servants, various statutes have been passed; and now, by sect. 67 and the six following sections of the present Act, the powers of the law have been largely extended.

Value.

The value of the property stolen is immaterial.

Larceny by servant.

Where a person was sent with 6s. to buy twelve cwt. of coals, and he bought a smaller quantity, for which he paid 3s. 3d., and appropriated one of the shillings to his own use, it was held by *Patteson, J.*, a larceny. (*Reg. v. Beaman*, 1 C. & M. 595.)

So, where A. employed B. to take his barge from S. to E., and paid him his wages in advance, and gave him a separate sum of three sovereigns to pay the tonnage dues, and B. took the barge sixteen miles, and paid tonnage dues to the amount of less than £2, and appropriated the remaining sovereign to his own use:—*Patteson, J.*, held it was a larceny. (*Reg. v. Goode*, 1 C. & M. 582.)

Formerly, where a person was allowed to have possession of a chattel, and he converted it to his own use, it was not larceny unless at the time he obtained possession he had an intention of stealing it; but it was otherwise where he had a mere custody. (*Reg. v. Jones*, 1 C. & M. 611.) But see now sect. 3, *ante*, 227.

If offence amount to embezzlement, prisoner may be convicted of that offence.

If the offence amount to embezzlement, the offender is not entitled to be acquitted, but may be convicted of the embezzlement. See sect. 72, *post*, 264.

Distinctions between larceny and embezzlement.

Where the property has never been in the possession of the master except by the hands of the defendant, it is embezzlement and not larceny. (*R. v. Sullens*, 1 Moo. C. C. 129; but see also *Reg. v. Watts*, 2 Den. C. C. 14; 19 L. J., M. C. 193.) So, where a servant, having authority to sell goods and receive the money, sells some and conceals the transaction, he cannot be convicted of stealing the goods, although guilty of embezzling the price. (*Reg. v. Betts, Bell*, C. C. 90; S. C., 28 L. J., M. C. 69.)

If not a servant, may be convicted of simple larceny.

If the defendant is not shown to be a clerk or servant, but a larceny is proved, he may be convicted of the larceny merely. (*Reg. v. Jennings*, *Dears. & B. C. C.* 447.)

Distinction between false pretence and larceny.

Where a servant, by a false pretence, induced his master to give him a cheque, as agent of a creditor of his master, with the view of its being

handed over to that creditor, and the servant appropriated the cheque to his own use, it was held that he was not guilty of larceny, although he might have been convicted on an indictment charging the obtaining of the cheque by false pretences. (*Reg. v. Essex, Dears. & B. C. C. 371.*) It is not necessary that the larceny should be of a specific amount on a particular day. (*Reg. v. Wright, Dears. & B. C. C. 431.*)

(q) *Larceny or Embezzlement by Clerks, etc.*

By sect. 68, "Whosoever, being a clerk or servant, or being employed for the purpose or in the capacity of a clerk or servant, shall fraudulently embezzle any chattel, money, or valuable security which shall be delivered to, or received or taken into possession by, him for or in the name or on the account of his master or employer, or any part thereof, shall be deemed to have feloniously stolen the same from his master or employer, although such chattel, money, or security was not received into the possession of such master or employer otherwise than by the actual possession of his clerk, servant, or other person so employed; and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

Embezzlement by servants.

As to embezzlements by poor persons in workhouses, see the 55 Geo. 3, c. 137, and of goods in a warehouse, the 16 & 17 Vict. c. 95.

Where the master had no previous possession of the property distinct from the actual possession of the servant, it was no larceny at common law for the servant to convert it to his own use, but merely a breach of trust, *ante*, 208.

As to what is a "valuable security," see sects. 1, 27, *ante*, 226, 236.

This Act is intended to apply to persons in the ordinary situations of clerks or servants, and having masters to whom they were accountable for the discharge of the duties of their situation. (*Per Bayle, B., in Williams v. Stott, 1 C. & M. 685.*) It extends to female servants (*R. v. Smith, R. & R. 267*), apprentices (*R. v. Mellish, R. & R. 80*), travellers (*R. v. Carr, R. & R. 198*), and persons employed by overseers (*R. v. Squire, R. & R. 349*; *2 Stark. Rep. 349, S. C.*; *Reg. v. Townsend, 1 Den. C. C. 167*; *Reg. v. Adey, 1 Den. C. C. 578*; *Reg. v. Carpenter, 35 L. J., M. C. 169*), an extra collector of poor rates (*R. v. Ward, Gow. 168*; and see *R. v. Tyers, R. & R. 402*; *R. v. Beauchall, 1 Moo. C. C. 15*; and also *Reg. v. Callahan, 8 Car. & P. 154*); a solicitor employed as a land agent to a railway company (*Reg. v. Gibson, 8 Cox, C. C. 436*); a clerk of a savings-bank (*R. v. Jenson, 1 Moo. C. C. 434*); an agricultural labourer employed as a bailiff (*Reg. v. Wortley, 2 Den. C. C. 333*); the secretary of a money club (*Reg. v. Tongue, Bell, C. C. 289*; *Reg. v. Miller, 2 Moo. C. C. 294*); a commercial traveller (*R. v. Tite, 1 Leigh & Cave, C. C. 29*; *30 L. J., M. C. 142*); a secretary and member of a friendly society (*R. v. Proul, 31 L. J., M. C. 71*; *L. & C. 97*); and a collector of a manufacturing firm with a percentage on profits. (*Reg. v. Macdonald, 31 L. J., M. C. 67*; *L. & C. 85.*)

Nor is the nature of the wages (*R. v. Mellish, R. & R. 80*; *R. v. Hartley, R. & R. C. 139*), or the duration of the employment (*R. v. Spencer, R. & R. 299*; *Reg. v. Tongue, Bell, C. C. 289*), material; therefore, where the prosecutor, having agreed to let the defendant carry out parcels when he had nothing else to do, for which the prosecutor was to pay him what he pleased, gave him an order to receive £2, which he received and embezzled, he was holden to be a servant within the meaning of the Act. (*R. v. Spencer, R. & R. 299. See R. v. Smith, Id. 516.*)

But, since embezzlement necessarily involves secrecy and concealment, if the prisoner, in rendering his account, instead of denying the appropriation of property, admits the appropriation, alleging a right in him-

To whom the statute extends.

Alleging a right or excuse takes it out of the statute. Rendering an account.

(q) *Larceny*  
or *Embezzlement* by  
*Clerks, etc.*

Accounting.

self, no matter how unfounded, or setting up an excuse, no matter how frivolous, his offence in taking and keeping is no embezzlement. (*Reg. v. Norman*, 1 C. & M. 501.)

It was the duty of A. to collect rates, and pay them into the bank, and enter the sums in a book, and to charge himself by the entries, and to discharge himself by the receipts of the overseers for the amounts paid; and, by falsely stating that he had paid the sums which he had misappropriated into the bank, he obtained receipts for those sums. He had, however, duly entered the moneys, when received, in the book, and had thus openly charged himself with the receipt of them. Held, that he was rightfully convicted of embezzlement. (*Reg. v. Guelder*, 30 L. J., M. C. 34. See also *Reg. v. Lister*, 27 L. J., M. C. 26.)

Where it is the servant's duty to account at stated times, or even at no particular times, if the jury should be of opinion that his not accounting was fraudulent, he will be guilty of embezzlement. (*Reg. v. Jackson*, 1 C. & K. 384; *Reg. v. Welsh*, 1 Den. C. C. 199; *R. v. Squire*, R. & R. 349; *Reg. v. Wortley*, 2 Den. C. C. 333.)

Who is a servant.

And, where a drover, who was employed to drive two cows to a purchaser and receive the purchase-money, embezzled it, he was holden to be a servant within the meaning of the Act. (*R. v. Hughes*, 1 Moo. C. C. 370.)

Where the owner of a colliery employed the prisoner, as captain of one of his barges, to carry out and sell coals, and paid him for his labour by allowing him two-thirds of the price for which he sold the coals, after deducting the price charged at the colliery, it was held that the prisoner was a servant within the meaning of the 39 Geo. 3, c. 85; and that, having embezzled the price, he was guilty of larceny within that Act. (*R. v. Hartley*, R. & R. 139.)

The Act embraces persons employed in the capacity of clerks or servants to corporations. (*Williams v. Stott*, 1 C. & M. 689.) For a clerk of a joint-stock banking company, established under the 7 Geo. 4, c. 46, was convicted of embezzling the money of the company, although he was a shareholder or partner in such company (*Reg. v. Atkinson*, 1 C. & M. 525); and the conviction was held right by the judges. And a party employed as the clerk of a corporation will be within the Act, though he was not appointed under their common seal. (*R. v. Wellings*, 1 C. & P. 457.)

Who is not a  
servant.

Embezzlement by a man who is neither clerk nor servant, nor in any respect under the control of the person by whom he is, in a single instance only, requested to receive money, is not within the 67th section of the above Act; for he does not come within the description of clerk or servant, or a person employed for the purpose of or in the capacity of a clerk or servant. (*R. v. Nettleton*, 1 Moo. C. C. 259.)

In *R. v. Proud* (L. & C. 97), where the secretary and acting treasurer was held to be the servant of the trustees of a friendly society, the moneys embezzled were vested in the trustees (see *per Martin*, B., in *R. v. Bren*, L. & C. 346); but had this not been so, it seems he might have been held to be a part owner and not a servant. (See also *R. v. Marsh*, 3 F. & F. 523.)

Agent not a ser-  
vant.

So a mere agent is not a clerk or servant. (*Reg. v. Walker*, Dears. & B. C. C. 600; *Reg. v. May*, Leigh and Cave, C. C. 13; 30 L. J., M. C. 81; *Reg. v. Bowers*, L. R., 1 C. C. R. 42.) Nor is a person who receives money for another without remuneration. (*Reg. v. Hoare*, 1 F. & F. 647.)

Unremunerated  
person not a ser-  
vant.

A committee formed of the members of two friendly societies appointed certain persons of the committee to sell excursion tickets, and the prisoner was one of those nominated. He sold some of the tickets, but fraudulently appropriated the money to his own use. He received no remuneration for his services. Held that the prisoner was not liable

to be convicted on an indictment charging him as servant to the other members of the committee with embezzling their moneys. (*Reg. v. Bren*, 33 L. J., M. C. 59; L. & C. 346.) This case appears, however, to have been partly decided upon the ground that the prisoner was a joint owner of the tickets.

(q) *Larceny or Embezzlement by Clerks, etc.*

Prisoner must be under some control.

The prisoner must be under some control in order to come within the description of clerk or servant. (See *R. v. May*, L. & C. 13; *R. v. Bren*, L. & C. 346.)

In *R. v. Bowers*, L. R., 1 C. C. R. 42, it was held that a person who is employed to get orders for goods and to receive payment for them, but who is at liberty to get orders and receive payment where and when he thinks proper, and to dispose of his time as he thinks best, being paid by a commission on the goods sold, is not a clerk or servant.

The driver of a glass coach hired for the day is not the servant of the party hiring it, so as to bring him within the Act. (*R. v. Haydon*, 7 C. & P. 445. And see *Laugher v. Poynter*, 5 B. & C. 547.)

Driver of coach.

A., being one of several proprietors of a Hereford and Birmingham coach, horsed it from Hereford to Worcester, and employed B. to drive it when he did not himself drive it; B. having all the gratuities as well when A. drove as when B. himself did so. It was the duty of B., on each day when he drove, to tell the book-keeper at Malvern how much money he had taken, the book-keeper entering that sum in a book and on the way-bill, together with what he had taken himself, and he then had to pay over the latter to B., who was to give the two sums to A. B. gave true accounts to the book-keeper, who made true entries; but B. accounted for smaller sums to A., saying that those were all, and paid over to A. these smaller sums. All the proprietors were interested in the money, but A. was the person to receive it, and he was accountable to his co-proprietors;—Held, that this was embezzlement, and that B. was rightly described in the indictment as the servant of A., and that the money embezzled was properly laid as the money of A. (*Reg. v. White*, 8 C. & P. 742.)

Where a society, in consequence of administering to its members an unlawful oath, is an unlawful combination and confederacy, a person charged with embezzlement as clerk and servant to such society cannot be convicted. (*Reg. v. Hunt*, 8 C. & P. 642. But see *R. v. Hall*, 1 Moo. C. C. 474; *Reg. v. Millar*, 2 Moo. C. C. 249.)

Unlawful society.

A prisoner, who had been employed, sometimes as a regular labourer, sometimes as a roundsman for a day at a time, and had on several occasions been sent to a banker's to receive the amount of cheques, was sent to the banker's with a cheque for payment, for which he was to receive 6d., he not being in the prosecutor's employment at the time: he received the money for the cheque and embezzled it, and, being indicted for the embezzlement, *Park, J.*, after consulting *Taunton, J.*, held, that he was not a clerk or servant within the meaning of the Act of Parliament. (*R. v. Freeman*, 5 C. & P. 534. *Sed quære.*)

Occasional employment insufficient.

A person employed to collect sacrament money is not servant of either the minister, churchwardens, or poor. (*R. v. Burton*, 1 Moo. C. C. 237.)

Sacrament money.

An under-bailiff of a county court is not the servant of the high-bailiff, to pay over to him money due to the registrar. (See *R. v. Glover*, L. & C. 466.)

Bailiff of county Court.

A servant in employ of A. and B. is servant of each; and, if he embezzle private moneys of one, he may be indicted as servant of that individual partner. (*R. v. Leech*, 3 Stark. 70.)

Servant of joint employers.

So, where a traveller is employed by several houses to receive money, he is the individual servant of each. (*Per Bayley, J.*, *ib.*; *R. v. Carr*,



(q) *Larceny or Embezzlement by Clerks, etc.*

*R. & R.* 198. And see also *Reg. v. Batty*, 2 *Moo. C. C.* 257; *Reg. v. Tite, Leigh and Cave*, *C. C.* 29; 30 *L. J.*, *M. C.* 142; *Reg. v. White*, 2 *Moo. C. C.* 91; *R. v. Bayley*, *Dears. & B. C. C.* 121; 26 *L. J.*, *M. C. 4.*)

Amount received.

A variance between the indictment and the evidence as to the amount received is immaterial since the statute. (*R. v. Carson*, *R. & R. C. C.* 303. See also *R. v. Grove*, 1 *Moo. C. C.* 447; *Reg. v. Lambert*, 2 *Cox, C. C.* 309; *Reg. v. Chapman*, 1 *C. & K.* 119; *Reg. v. Moah, Dears. C. C.* 626.)

"For or in the name or on account of his master."

To constitute the offence the defendant must have received the money, etc., for or in the name or on account of his master.

In *R. v. Whittingham* (2 *Leach*, 912) it was held, that it was an offence within the 39 Geo. 3, c. 85, for a servant to embezzle money received from a customer of his master, though the money had been given to the customer by the master in order that it might be paid in the course of business to the servant, for the purpose of trying the servant's honesty.

So in *R. v. Hedge* (2 *Leach*, 1033; *R. & R.* 160, *S. C.*) it was decided, that a servant secreting money which the master had marked and sent by a friend who was to make a purchase with it at the shop with a view of trying the honesty of the servant, was guilty of embezzlement. (See also *R. v. Bazeley*, 2 *Leach*, 841; *Reg. v. Gill, Dears. C. C.* 289.)

Evidence of intention to embezzle.

A., a servant of B., was sent to receive rent. She received it and went off with it to Ireland:—Held there was evidence from which the jury might infer that A. intended to embezzle the money. (*R. v. Williams*, 7 *C. & P.* 338.)

Where prisoner was to have part of the price, he is guilty if he retain the whole.

If a servant receive money for his master for an article made of his master's materials and feloniously retain the money, he will be guilty of embezzlement, though he made the article and was to have part of the price for making it. (*R. v. Hoggins, R. & R.* 145.)

This section omits the words "by virtue of his employment" contained in the repealed enactment; and it would therefore seem that the embezzling money by a servant is within the statute, although he is not authorized to receive it; and, that being so, the cases as to what is a receiving by virtue of his employment are as to that point no longer of any practical value.

Money received from the master, etc., is not within the statute, but will be a larceny.

Money received from the master himself (*R. v. Peck*, 2 *Russ. C. & M.* 180; *R. v. Smith, R. & R. C. C.* 267; *Reg. v. Hawkins*, 1 *Den. C. C.* 584; *Reg. v. Goodenough, Dears. C. C.* 210), or from any fellow-clerk or servant (*R. v. Murray*, 1 *Moo. C. C.* 276; *Reg. v. Watts*, 2 *Den. C. C.* 15; *Reg. v. Read, Dears. C. C.* 168, 257; see, however, *Reg. v. Masters*, 1 *Den. C. C.* 332), is not within this section. But in such a case, the defendant may be indicted and convicted for a larceny of the money. So, too, where the possession of the servant has been determined, as by his placing the money, etc., in a safe belonging to his employers (*Reg. v. Wright, Dears. & B. C. C.* 431), a subsequent taking is larceny and not embezzlement.

Where the defendant disposes of his master's goods, and receives but does not account for the price, the transaction will be larceny of the goods or embezzlement of the price, according as the servant had or had not authority to dispose of the goods. (*R. v. Hoggins, R. & R. C. C.* 145; *Reg. v. Wilson*, 9 *Car. & P.* 27; *Reg. v. Betts, Bell C. C.* 90; *S. C.* 28 *L. J.*, *M. C.*, 69.) So, where a servant obtains money by making an unauthorized use of his master's property, as by grinding corn in his master's mill, he cannot be convicted of embezzling the money, because it is not received for or on account of his master. (*Reg. v. Harris, Dears. C. C.* 344. But see *Reg. v. Thorpe, Dears. & B. C. C.* 562.)

Where W. employed his servant to deliver coals, according to the

terms of a contract he had entered into with a company who sold them, and the servant used to receive the money paid by the purchasers and deliver it to the manager of the company, it was held that there was no receiving on account of W. (*Reg. v. Bramont, Dears. C. C. 271; Reg. v. Gibbs, Ib. 445.*)

(q) *Larceny or Embezzlement by Clerks, etc.*

By the 25 & 26 Vict. c. 63, s. 16, any person appointed to any office or service by or under any marine board, shall be deemed to be a clerk or servant within the meaning of sect. 68 of the 24 & 25 Vict. c. 96.

Officers of marine board.

By the 24 & 25 Vict. c. 96, c. 69, "Whosoever, being employed in the public service of her Majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place whatsoever, shall steal any chattel, money, or valuable security belonging to or in the possession or power of her Majesty, or entrusted or received or taken into possession by him by virtue of his employment, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years with or without hard labour and with or without solitary confinement."

Larceny by persons in the Queen's service or by the police.

This section is entirely new, and is framed so as to bear the same relation to the next following section that sect. 67 bears to sect. 68. It is to be observed also that sect. 72, by which it is provided, that if upon the trial of any person for embezzlement the proof shall amount to larceny, or *vice versa*, the prisoner will not be entitled to an acquittal, applies to these two sections. (See *post*, 264, and also sect. 71, *post*, 262, as to indictments.)

As to what is a "valuable security," see sects. 1, 27, *ante*, 226, 236.

By sect. 70, "Whosoever, being employed in the public service of her Majesty, or being a constable or other person employed in the police of any county, city, borough, district, or place whatsoever, and entrusted by virtue of such employment with the receipt, custody, management, or control of any chattel, money, or valuable security, shall embezzle any chattel, money, or valuable security which shall be entrusted to or received or taken into possession by him by virtue of his employment, or any part thereof, or in any manner fraudulently apply or dispose of the same or any part thereof to his own use or benefit or for any purpose whatsoever except for the public service, shall be deemed to have feloniously stolen the same from her Majesty, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years with or without hard labour; and every offender against this or the last preceding section (*i. e.*, sect. 69) may be dealt with, indicted, tried, and punished either in the county or place in which he shall be apprehended or be in custody or in which he shall have committed the offence; and in every case of larceny, embezzlement, or fraudulent application or disposition of any chattel, money, or valuable security in this and the last preceding section mentioned, it shall be lawful in the warrant of commitment by the justice of the peace before whom the offender shall be charged, and in the indictment to be preferred against such offender, to lay the property of any such chattel, money, or valuable security, in her Majesty."

Embezzlement by persons in the Queen's service or by the police.

Venue.

As to what is a "valuable security," see sects. 1, 27, *ante*, 226, 236.

Evidence of acting in the capacity of an officer employed by the Crown is sufficient to support an indictment; and the appointment need not be regularly proved. (*R. v. Borrett, 6 C. & P. 124; Reg. v. Townsend, C. & M. 178.*)

Appointment need not be proved.

(g) *Larceny or Embezzlement by Clerks, etc.*

At common law, persons employed in the Post-Office have no special property in the letters committed to their charge, which may prevent their stealing them from amounting to larceny at common law. (1 *Leach*, 1.)

Post-office servants, etc.

But now, by the 7 Will. 4 & 1 Vict. c. 36, s. 41, to steal any chattel, money, or valuable security out of a post letter, is felony, punishable by transportation for life. And by sect. 26 of the same statute, if any person employed under the Post-Office shall steal, or for any purpose whatever embezzle, secrete, or destroy a post letter, it is felony, punishable by transportation or imprisonment; or if the letter contain a chattel, or money, or valuable security, by transportation for life.

By the 20 & 21 Vict. c. 3, s. 2, penal servitude is substituted for transportation in every case.

By sect. 42 of the 7 Will. 4 & 1 Vict. c. 36, the person convicted under that statute might be kept in solitary confinement for the whole or any portion of his imprisonment; but by the 7 Will. 4 & 1 Vict. c. 90, s. 5, the Court can only order solitary confinement for one month at any one time, and three months in any one year.

What is a post letter.

A letter which found its way into the post-office by being brought there by an inspector, and which was put into the prisoner's heap as he turned his head away, was held not to be a post letter within the meaning of the Act (*Reg. v. Rathbone, Car. & M.* 220); nor where delivered through a window by one inspector to another, but not in the ordinary course of the post-office. (*Reg. v. Shepherd*, 25 *L. J., M. C.* 52; and see *Reg. v. Gardner*, 1 *C. & K.* 628.)

Who is a servant.

If a person, while engaged in gratuitously assisting a postmaster at his request in sorting the letters steal one of them, he is liable to the severer penalties imposed by the 7 Will. 4 & 1 Vict. c. 36, s. 26, as a person employed under the Post-Office. (*R. v. Reason*, 23 *L. J., M. C.* 11.)

Post letters, etc., stolen or fraudulently retained, may be described as the property of the Postmaster-General. (1 *Vict. c. 36, s. 40.*)

The money orders issued by the post office are valuable securities for the payment of money within the statute (see sects. 1, 27, *ante*, 226, 236); and it is no objection that they are unstamped, the practice of issuing them without a stamp having existed before, and been legalized by the 3 & 4 Vict. c. 96. (*Reg. v. Gilchrist*, 1 *C. & M.* 224.)

See the statutory provisions, tit. "*Post Office*," *post*, passed for the more effectually securing this kind of property.

Distinct acts of embezzlement may be charged in the same indictment.

By sect. 71, "For preventing difficulties in the prosecution of offenders in any case of embezzlement, fraudulent application or disposition hereinbefore mentioned, it shall be lawful to charge in the indictment and proceed against the offender for any number of distinct acts of embezzlement, or of fraudulent application or disposition, not exceeding three, which may have been committed by him against her Majesty or against the same master or employer, within the space of six months from the first to the last of such acts; and in every such indictment, where the offence shall relate to any money or any valuable security, it shall be sufficient to allege the embezzlement, or fraudulent application or disposition, to be of money, without specifying any particular coin or valuable security; and such allegation, so far as regards the description of the property, shall be sustained if the offender shall be proved to have embezzled or fraudulently applied or disposed of any amount, although the particular species of coin or valuable security of which such amount was composed shall not be proved; or if he shall be proved to have embezzled or fraudulently applied or disposed of any piece of coin or any valuable

Sufficient to allege the embezzlement to be of money.

security, or any portion of the value thereof, although such piece of coin or valuable security may have been delivered to him in order that some part of the value thereof should be returned to the party delivering the same, or to some other person, and such part shall have been returned accordingly."

As to what is a "valuable security," see sects. 1, 27, *ante*, 226, 236.

With respect to stating three distinct acts in one indictment, see the notes to sects. 5 and 6, *ante*, 228, 229.

The acts should be charged in separate counts as in cases of larceny. (*Reg. v. Purchase*, 1 *Car. & M.* 617.)

With regard to the *venue*, it has been held that, where the property comes into the prisoner's possession in one county, and he denies the receipt of it, or refuses to account for it, in another, the *venue* should be laid in the latter county, because, until such denial or refusal, the offence cannot be considered complete. (*R. v. Taylor*, *R. & R.* 63.) In one case, however, the *venue*, though laid in the former county, was, under particular circumstances, held correct. (*R. v. Hobson*, *R. & R.* 56.) But now by the 7 Geo. 4, c. 64, s. 12, where a felony or misdemeanour is begun in one county and completed in another, the *venue* may be laid in either county. (And see *Reg. v. Murdock*, 2 *Den. C. C.* 298.) Except where the offence relates to a chattel (which must be described as in an indictment for larceny), it is sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security. (See sect. 71.)

The value of the property embezzled need not be stated. (*R. v. Carson*, *R. & R.* 303. See *Collyer's Stat.* 101; *R. v. Grove*, 1 *Moo. C. C.* 447; *Reg. v. Lambert*, 2 *Cox, C. C.* 309.)

It is not sufficient to follow the words of the statute; but there must be a positive allegation that the money embezzled was the property of the prosecutor, as in other cases of larceny. (*R. v. McGregor*, *Old Bailey*, September, 1801, 3 *B. & P.* 106; 2 *East's P. C.* 576; 2 *Leach*, 932; *R. & R.* 23, *S. C.*; *R. v. Beacall*, 1 *Moo. C. C.*)

The indictment need not state the name of the person from whom the money embezzled was received. (*R. v. Beacall and Wellings*, 1 *C. & P.* 454.) But, as this may operate as a hardship upon the prisoner, the judge before whom he is to be tried will, upon application, order the prosecutor to furnish the prisoner with a particular of the charge. (*R. v. Bootyman*, 5 *C. & P.* 300; *R. v. Hodgson*, 3 *C. & P.* 422.)

In an indictment for embezzlement, a collector of poor and other rates, in the parish of St. Paul's, Covent Garden, was held to be rightly described under the 10 Geo. 4, c. 68, as servant to the committee of management of the affairs of that parish, though he was elected by the vestrymen of the parish. (*R. v. Callahan*, 8 *C. & P.* 154, *per Vaughan* and *Patteson*, JJ.)

Where the indictment contains only one count, charging the receipt of a gross sum on a particular day, and it appears in evidence that the money was received in different sums on different days, the prosecutor will be put to his election, and must confine himself to one sum and one day. (*R. v. Williams*, 6 *C. & P.* 626.)

It seems it is not necessary to allege or prove the embezzling to have taken place while the prisoner continued clerk or servant to the prosecutor. (*Reg. v. Lovell*, 2 *M. & Rob.* 236.)

A count for larceny as a servant, and for simple larceny, may be joined with a count for embezzlement under the present statute. (*R. v. Johnson*, 3 *M. & S.* 539.)

But see now sect. 72, *infra*, by which a prisoner may be found guilty of larceny upon an indictment for embezzlement and *vice versa*, according to the result of the evidence in law; but upon an indictment for larceny, a general verdict cannot be sustained upon evidence of embezzlement only, *i. e.* he cannot be convicted of stealing on evidence of embezzling,

(q) *Larceny or Embezzlement by Clerks, etc.*

Sufficient though part of the value be not embezzled.

Indictment.

(r) *Larceny*  
by Tenants or  
Lodgers.

Person indicted  
for embezzle-  
ment not to be  
acquitted if of-  
fence turn out to  
be larceny, and  
*vice versâ*.

or, it is presumed, *vice versâ*. (Reg. v. Gorbutt, Dears. & B. C. C. 166; 26 L. J., M. C. 47.)

By sect. 72, "If upon the trial of any person indicted for embezzlement or fraudulent application or disposition as aforesaid, it shall be proved that he took the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of embezzlement or fraudulent application or disposition, but is guilty of simple larceny, or of larceny as a clerk, servant, or person employed for the purpose or in the capacity of a clerk or servant, or as a person employed in the public service or in the police, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such larceny; and if upon the trial of any person indicted for larceny, it shall be proved that he took the property in question in any such manner as to amount in law to embezzlement or fraudulent application or disposition as aforesaid, he shall not by reason thereof be entitled to be acquitted, but the jury shall be at liberty to return as their verdict that such person is not guilty of larceny, but is guilty of embezzlement or fraudulent application or disposition, as the case may be; and thereupon such person shall be liable to be punished in the same manner as if he had been convicted upon an indictment for such embezzlement, fraudulent application, or disposition; and no person so tried for embezzlement, fraudulent application, or disposition, or larceny as aforesaid, shall be liable to be afterwards prosecuted for larceny, fraudulent application, or disposition, or embezzlement upon the same facts."

Embezzlement  
by officers of the  
Bank of England  
or Ireland.

By sect. 73, "Whosoever, being an officer or servant of the governor and company of the Bank of *England* or of the Bank of *Ireland*, and being intrusted with any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or with any security, money, or other effects of or belonging to the said governor and company, or having any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest or money, or any security, money, or other effects of any other person, body politic or corporate, lodged or deposited with the said governor and company, or with him as an officer or servant of the said governor and company, shall secrete, embezzle, or run away with any such bond, deed, note, bill, dividend or other warrant, security, money, or other effects as aforesaid, or any part thereof, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

As to embezzling warehoused goods by officers of customs and others, see the 16 & 17 Vict. c. 107, s. 95.

#### (r) LARCENY BY TENANTS OR LODGERS.

Tenant or lodger  
stealing chattel  
or fixture let to  
hire with house  
or lodgings.

By sect. 74, "Whosoever shall steal any chattel or fixture let to be used by him or her in or with any house or lodging, whether the contract shall have been entered into by him or her or by her husband, or by any person on behalf of him or her or her husband, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping, and, in case the value of such chattel or fixture shall exceed the sum of five pounds, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three

[five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping; and in every case of stealing any chattel in this section mentioned, it shall be lawful to prefer an indictment in the common form as for larceny; and in every case of stealing any fixture in this section mentioned, to prefer an indictment in the same form as if the offender were not a tenant or lodger, and in either case to lay the property in the owner or person letting to hire."

With respect to injuries by tenants and lodgers, see the 24 & 25 Vict. c. 97, s. 13, *post*, tit. "*Malicious Injuries*."

As the lodger has a special property in the goods which are let with his lodgings, the stealing of them is no felony at common law, though this was formerly much doubted. (*R. v. Raven*, *Kel.* 24; *R. v. Meere*, *Show.* 50.)

This provision extends to fixtures, which the repealed statute of 3 W. & M. c. 5, s. 2, did not, and also to houses as well as lodgings; and, by this provision, some trouble, as to stating the contract of letting, which previously existed, is avoided. The case of *Palmer* (2 *East's P. C.* 586) is not applicable to this new provision. In a case, decided before this new Act, it was thought to be unnecessary to state *by whom* the lodging was let, and all the judges held, that the letting might be stated either according to the fact, or according to the legal operation. (*R. v. Healy*, 1 *Moo. C. C.* 1.)

#### (s) FRAUDS BY AGENTS, BANKERS, OR FACTORS.

By sect. 75, "Whosoever, having been intrusted, either solely, or jointly with any other person, as a banker, merchant, broker, attorney, or other agent, with any money or security for the payment of money, with any direction in writing to apply, pay, or deliver such money or security or any part thereof respectively, or the proceeds or any part of the proceeds of such security, for any purpose or to any person specified in such direction, shall, in violation of good faith, and contrary to the terms of such direction, in anywise convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such money, security, or proceeds, or any part thereof respectively; and whosoever, having been intrusted, either solely, or jointly with any other person, as a banker, merchant, broker, attorney, or other agent, with any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of the United Kingdom, or any part thereof, or of any foreign state, or in any stock or fund of any body corporate, company, or society, for safe custody or for any special purpose, without any authority to sell, negotiate, transfer, or pledge, shall, in violation of good faith, and contrary to the object or purpose for which such chattel, security, or power of attorney shall have been intrusted to him, sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so intrusted, such chattel or security, or the proceeds of the same, or any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; but nothing in this section contained relating to agents shall affect any trustee in or under any instrument whatsoever, or any mortgagee of any property, real or personal, in respect of any act done by such trustee or mortgagee in relation to the property comprised in or affected by any such trust or

(s) *Frauds by Agents, etc.*

Agent, banker, etc., embezzling money or selling securities, etc., intrusted to him;

or goods, etc., intrusted to him for safe custody.

Punishment.

Not to affect trustees or mortgagees;

(s) *Frauds by Agents, etc.*

nor bankers, etc., receiving money due on securities;  
or disposing of securities on which they have a lien.

"Direction in writing."

Bankers, etc., fraudulently selling, etc., property intrusted to their care.

Persons under powers of attorney fraudulently selling property.

Factors obtaining advances on the property of their principals.

mortgage; nor shall restrain any banker, merchant, broker, attorney, or other agent from receiving any money which shall be or become actually due and payable upon or by virtue of any valuable security, according to the tenor and effect thereof, in such manner as he might have done if this Act had not been passed; nor from selling, transferring, or otherwise disposing of any securities or effects in his possession upon which he shall have any lien, claim, or demand entitling him by law so to do, unless such sale, transfer, or other disposal shall extend to a greater number or part of such securities or effects than shall be requisite for satisfying such lien, claim, or demand."

Both in the case of a deposit of money, and of a security for the payment of money, it must be alleged in the indictment and proved that there was a direction in writing. (*Reg. v. Golde*, 2 M. & Rob. 425; and see *Reg. v. Fletcher, Leigh & Cave*, 180.) If the purpose to which the money is to be applied is stated in the indictment, any variance between the allegation and the proof will be fatal unless amended. (*R. v. White*, 4 C. & P. 46; *Reg. v. Goodbody*, 8 C. & P. 665.)

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

As to "trustee," see sect. 1, *ante*, 226.

By sect. 76, "Whosoever, being a banker, merchant, broker, attorney, or agent, and being intrusted, either solely or jointly with any other person, with the property of any other person for safe custody, shall, with intent to defraud, sell, negotiate, transfer, pledge, or in any manner convert or appropriate the same, or any part thereof, to or for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned."

As to the interpretation of the word "property," see sect. 1, *ante*, 226.

By sect. 77, "Whosoever, being intrusted, either solely or jointly with any other person, with any power of attorney for the sale or transfer of any property, shall fraudulently sell or transfer or otherwise convert the same, or any part thereof, to his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned."

As to the interpretation of the word "property," see sect. 1, *ante*, 226.

For the punishment under this section, see sect. 75, *ante*, 265.

By sect. 78, "Whosoever, being a factor or agent intrusted, either solely or jointly with any other person, for the purpose of sale or otherwise, with the possession of any goods, or of any document of title to goods, shall, contrary to or without the authority of his principal in that behalf, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, make any consignment, deposit, transfer, or delivery of any goods or document of title so intrusted to him as in this section before-mentioned, as and by way of a pledge, lien, or security for any money or valuable security borrowed or received by such factor or agent at or before the time of making such consignment, deposit, transfer, or delivery, or intended to be thereafter borrowed or received; or shall, contrary to or without such authority, for his own use or benefit, or the use or benefit of any person other than the person by whom he was so intrusted, and in violation of good faith, accept any advance of money or valuable security on the faith of any contract or agreement to consign, deposit, transfer, or deliver any such goods or document of title, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable,

at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned. And every clerk or other person who shall knowingly and wilfully act and assist in making any such consignment, deposit, transfer, or delivery, or in accepting or procuring any such advance as aforesaid, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the same punishments. Provided that no such factor or agent shall be liable to any prosecution for consigning, depositing, transferring, or delivering any such goods or document of title, in case the same shall not be made a security for or subject to the payment of any greater sum of money than the amount which at the time of such consignment, deposit, transfer, or delivery was justly due and owing to such agent from his principal, together with the amount of any bill of exchange drawn by or on account of such principal and accepted by such factor or agent."

As to who is a factor or agent intrusted, see *Phillips v. Heath*, 6 M. & W. 572; *Hatfield v. Phillips*, 14 M. & W. 665; *Heyman v. Flewker*, 13 C. B. (N. S.) 519; and *Lamb v. Attenborough*, 1 B. & S. 831.

For "document of title to goods," see sect. 1, *ante*, 225.

Sect. 79. "Any factor or agent intrusted as aforesaid, and possessed of any such document of title, whether derived immediately from the owner of such goods, or obtained by reason of such factor or agent having been intrusted with the possession of the goods, or of any other document of title thereto, shall be deemed to have been intrusted with the possession of the goods represented by such document of title; and every contract pledging or giving a lien upon such document of title as aforesaid, shall be deemed to be a pledge of and lien upon the goods to which the same relates; and such factor or agent shall be deemed to be possessed of such goods or document, whether the same shall be in his actual custody or shall be held by any other person subject to his control, or for him, or on his behalf; and where any loan or advance shall be *bonâ fide* made to any factor or agent intrusted with and in possession of any such goods or document of title, on the faith of any contract or agreement in writing to consign, deposit, transfer, or deliver such goods or document of title, and such goods or document of title shall actually be received by the person making such loan or advance, without notice that such factor or agent was not authorized to make such pledge or security, every such loan or advance shall be deemed to be a loan or advance on the security of such goods or document of title within the meaning of the last preceding section, though such goods or document of title shall not actually be received by the person making such loan or advance till the period subsequent thereto; and any contract or agreement, whether made direct with such factor or agent, or with any clerk or other person on his behalf, shall be deemed a contract or agreement with such factor or agent; and any payment made, whether by money or bill of exchange or other negotiable security, shall be deemed to be an advance within the meaning of the last preceding section; and a factor or agent in possession as aforesaid of such goods or document, shall be taken, for the purposes of the last preceding section, to have been intrusted therewith by the owner thereof, unless the contrary be shown in evidence."

For the interpretation of the words "document of title to goods," see sect. 1, *ante*, 225; and for the punishment see sect. 75, *ante*, 265.

By sect. 80, "Whosoever, being a trustee of any property for the use or benefit, either wholly or partially, of some other person, or for any public or charitable purpose, shall, with intent to defraud, convert or appropriate the same or any part thereof to or for his own use or benefit, or the use or benefit of any person other than such person as aforesaid, or for any purpose other than such public or charitable purpose as aforesaid, or otherwise dispose of or destroy such property or any part

(s) *Frauds by Agents, etc.*

Clerks wilfully assisting.

Cases excepted where the pledge does not exceed the amount of the lien.

Definition of terms.

"Intrusted."

"Pledge."

"Possessed."

"Advance."

"Contract or agreement."

"Advance."

Possession to be evidence of intrusting.

Trustees fraudulently disposing of property, guilty of a misdemeanor.



(s) *Frauds by Agents, etc.*

Sanction of judge or Attorney-General.

thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned: Provided, that no proceeding or prosecution for any offence included in this section shall be commenced without the sanction of her Majesty's Attorney-General, or, in case that office be vacant, of her Majesty's Solicitor-General: Provided also, that where any civil proceeding shall have been taken against any person to whom the provisions of this section may apply, no person who shall have taken such civil proceeding shall commence any prosecution under this section without the sanction of the Court or judge before whom such civil proceeding shall have been had or shall be pending."

As to "trustee" and "property," see sect. 1, *ante*, 226; and as to the punishment, see sect. 75, *ante*, 265.

Directors of any body corporate or public company fraudulently appropriating property.

By sect. 81, "Whosoever, being a director, member, or public officer of any body corporate or public company, shall fraudulently take or apply for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company, any of the property of such body corporate or public company, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned."

As to "property," see sect. 1, *ante*, 226; and as to the punishment, see sect. 75, *ante*, 265.

The same keeping fraudulent accounts.

By sect. 82, "Whosoever, being a director, public officer, or manager of any body corporate or public company, shall as such receive or possess himself of any of the property of such body corporate or public company otherwise than in payment of a just debt or demand, and shall, with intent to defraud, omit to make, or to cause or direct to be made, a full and true entry thereof in the books and accounts of such body corporate or public company, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned."

As to "property," see sect. 1, *ante*, 226; and as to the punishment, see sect. 75, *ante*, 265.

The same wilfully destroying books, etc.

By sect. 83, "Whosoever, being a director, manager, public officer, or member of any body corporate or public company, shall, with intent to defraud, destroy, alter, mutilate, or falsify any book, paper, writing, or valuable security belonging to the body corporate or public company, or make or concur in the making of any false entry, or omit or concur in omitting any material particular in any book of account or other document, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned."

As to "valuable security," see sects. 1, 27, *ante*, 226, 236; and as to the punishment, see sect. 75, *ante*, 265.

The same publishing fraudulent statements.

By sect. 84, "Whosoever, being a director, manager, or public officer of any body corporate or public company, shall make, circulate, or publish, or concur in making, circulating or publishing any written statement or account which he shall know to be false in any material particular, with intent to deceive or defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any property to such body corporate or public company, or to enter into any security for the benefit thereof, shall be guilty of a misdemeanour; and, being convicted thereof, shall be liable, at the discretion of the Court, to any of the punishments which the Court may award, as hereinbefore last mentioned."

As to "property," see sect. 1, *ante*, 226; and as to the punishment, see sect. 75, *ante*, 265.

By sect. 85, "Nothing in any of the last ten preceding sections of this Act shall enable or entitle any person to refuse to make a full and complete discovery by answer to any bill in equity, or to answer any question or interrogatory in any civil proceeding in any Court, or upon the hearing of any matter in bankruptcy or insolvency; and no person shall be liable to be convicted of any of the misdemeanours in any of the said sections mentioned by any evidence whatever in respect of any act done by him, if he shall, at any time previously to his being charged with such offence, have first disclosed such act on oath, in consequence of any compulsory process of any Court of law or equity in any action, suit, or proceeding which shall have been *bond fide* instituted by any party aggrieved, or if he shall have first disclosed the same in any compulsory examination or deposition before any Court upon the hearing of any matter in bankruptcy or insolvency."

In *Reg. v. Skeen* (*Bell, C. C.* 97), a minority of the judges thought that a statement made before a commissioner was a "disclosure" within the 5 & 6 Vict. c. 39, s. 6, although the same facts had been previously proved before a magistrate. This doubt, however, cannot now arise, as the words of the present section are "first disclosed." (See also *Reg. v. Scott, Dears. & B.* 47; *Reg. v. Robinson, L. R. 1 C. C. R.* 86.)

In *Reg. v. Leatham* (30 *L. J., Q. B.* 205), it was held that documents referred to by a person making a statement under the compulsory proceedings taken under the 15 & 16 Vict. c. 57, are not protected.

By sect. 86, "Nothing in any of the last eleven preceding sections of this Act contained, nor any preceding conviction or judgment to be had or taken thereon against any person under any of the said sections, shall prevent, lessen, or impeach any remedy at law or in equity which any party aggrieved by any offence against any of the said sections might have had if this Act had not been passed; but no conviction of any such offender shall be received in evidence in any action at law or suit in equity against him; and nothing in the said sections contained shall affect or prejudice any agreement entered into or security given by any trustee, having for its object the restoration or re-payment of any trust property misappropriated."

For "trustee," see sect. 1, *ante*, 226.

Sect. 87. "No misdemeanour against any of the last twelve preceding sections of this Act shall be prosecuted or tried at any Court of general or quarter sessions of the peace."

With regard to the sections now under consideration, it should here be mentioned that, by the 14 & 15 Vict. c. 100, s. 12, on the trial of any misdemeanour, if the offence amount to larceny, the defendant will not be entitled to be acquitted; but the Court may direct the jury to be discharged, and the defendant to be indicted for the felony.

#### (t) CHEATS AT COMMON LAW.

*Hawkins* lays it down, that "cheats, which are punishable by the common law, may in general be described to be deceitful practices, in defrauding or endeavouring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty; as by playing with false dice; or by causing an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it was written; or by persuading a woman to execute writings to another, as her trustee, upon an intended marriage, which in truth contained no such thing, but only a warrant of attorney to confess a judgment; or by suppressing a will: and such

#### (t) Cheats at Common Law.

No person to be exempted answering questions in any Court, but no person making a disclosure in any compulsory proceeding to be liable to prosecution.

"First disclosed."

Documents referred to on compulsory proceedings are not protected.

Remedies at law or in equity not affected.

Convictions not receivable in evidence in civil suits.

General doctrine as to what amounts to an offence at common law by a cheat.

(t) *Cheats at Common Law.*

like." (1 *Hawk.* c. 71, s. 1.) But this general doctrine would include a variety of injuries for which the party's only remedy would be by action, and not by indictment; and it is now, it seems, settled by the various decisions on the subject, that at common law no cheat or fraud (not amounting to felony) is an indictable offence, unless it affects or may affect the public, and is effected by some deceitful and illegal practice, against which common prudence could not have guarded. (See 2 *East*, P. C. c. 18, s. 2; 2 *Russ. C. & M.* 282, 286, 3rd ed.)

Therefore, where the defendant was indicted and convicted for selling beer short of the due and just measure, to wit, sixteen gallons as and for eighteen. Upon a motion in arrest of judgment, it was said by the Court, "This is only an inconvenience and injury to a private person, arising from that private person's own negligence and carelessness in not measuring the liquor upon receiving it, to see whether it held the just measure or not. Offences that are indictable must be such as affect the public, as if a man use false weights and measures, and sell by them to all or to any of his customers, or use them in the general course of his dealing; so if there be any conspiracy to cheat; for these are deceptions that common care and prudence are not sufficient to guard against. These are much more than private injuries; they are *public offences*. But in the present case it is a mere *private* imposition or deception. No false weights or measures are used; no conspiracy; only an imposition upon the person he was dealing with, in delivering him a less quantity instead of a greater; which the other carelessly accepted. It is only a non-performance of his contract; for which non-performance the other may bring his action. So the selling an unsound horse for a sound one is not indictable. The buyer should be more upon his guard: and the distinction which was laid down, as proper to be attended to in all cases of this kind, is this; that in such impositions or deceits where common prudence may guard persons against their suffering from them, the offence is not indictable; but, where false weights and measures are used, or false tokens produced, or such measures taken to cheat and deceive, as people cannot by any ordinary care or prudence be guarded against, there it is an offence indictable." (*R. v. Wheatley*, 1 *Bla. Rep.* 273; 2 *Burr.* 1125, *S. C.*)

A mere breach of contract not an offence;

So, if without false weights a party sells to another a less quantity than he pretends to sell, it is no offence. (*R. v. Young*, 3 *T. R.* 104.)

as selling a less quantity then pretended,  
or bartering bad wine for hats,

So, where one person pretended to be a merchant, and the other a broker, and as such bartered bad wine for hats, it was considered that they were guilty of the offence of a *conspiracy* to cheat, but not of an offence of cheating. (*R. v. Mackarty*, 2 *Ld. Raym.* 1179, 1184; 3 *Ld. Raym.* 325; 2 *Burr.* 1129; 2 *East*, P. C. c. 18, s. 1, p. 824.)

or falsely warranting a horse, unless there be a conspiracy.

So, falsely warranting an unsound horse to be sound, well knowing it to be otherwise, is no offence, unless there be a conspiracy to defraud; and then an indictment might be supported for a conspiracy. (*R. v. Pywell*, 1 *Stark.* 402; and see *R. v. Codrington*, 1 *C. & P.* 661, *post.*)

Nor procuring another to execute a deed to his prejudice.

Nor is it, it seems, an offence to cause an illiterate person to execute a deed to his prejudice, by reading it over to him in words different from those in which it is written, unless there be a conspiracy. (See 2 *East*, P. C. c. 18, s. 5, p. 823, explaining the case of *R. v. Skirret*, 1 *Sid.* 312; 1 *Hawk.* c. 71, s. 1, and *R. v. Parris*, 1 *Sid.* 431.)

Nor cheating at a race.

And though, in the case of *Reg. v. Orbell*, it was held to be an indictable offence to get a person to lay money on a race, and to prevail with the party to run booty, yet the ground of the declaration appears to have been that the offence amounted to a conspiracy. (6 *Mod.* 42.)

Nor is a bare lie or false affirmation in a private transaction.

So the deceitful receiving of money from one man to the use of another, upon a false pretence of having a message and order to that purpose, is not an offence at common law in a private transaction, because it is

accompanied with no manner of artful contrivance, but only depends on a bare naked lie; and it is said to be needless to provide severe laws for such mischiefs, against which common prudence and caution may be a sufficient security. (1 *Hawk. c. 71, s. 2*; 2 *East's P. C. 818*.)

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So in a case where a party obtained money of another, by pretending to come by the command of a third person to demand a debt or the like in his name, showing no voucher or token for his authority; it was holden not indictable, for it was the party's own fault to trust him. And by the Court, "We are not to indict one man for making a fool of another: let him bring his action." (*R. v. Jones, 2 Ld. Raym. 1013*; 1 *Salk. 379*; 6 *Mod. 105, S. C.*; and see *R. v. Bryan, 2 Strange, 866*; *R. v. Gibbs, 1 East, 185*.)

And it seems the same doctrine will hold good, though the defendant made use of an apparent token, which in reality is, upon the very face of it, of no more credit than his own assertion. (2 *East's P. C. c. 18, s. 2*; 2 *Russ. C. & M. 3rd edit. 283*.) Therefore, where an indictment at common law charged the defendant with deceitfully intending, by divers crafty means and subtle devices, to obtain possession of certain lottery tickets, the property of A., pretending that he wanted to purchase them, and delivered to A. a fictitious order for the payment of money, purporting to be a draft upon a banker for the amount, which he knew he had no authority to draw, and would not be paid; by which he obtained the tickets, and defrauded the prosecutor of the value; it was objected in arrest of judgment, that the defendant was not charged with having used any false token to accomplish the deceit; for that the banker's cheque, drawn by the defendant himself, entitled him to no more credit than his bare assertion that the money would be paid. And the objection was held good, and the judgment arrested. (*R. v. Lara, 6 T. R. 565*; and see *R. v. Flint, R. & R. 460*.)

And the same where an apparent token only is used.

But in another case, on an indictment on the repealed 30 Geo. 2, c. 24, where it appeared that the prisoner had obtained property by giving a draft on his banker, and pretending he had cash there to pay it, *Bayley, J.* (before whom the prisoner was tried), said that this point had been recently before the judges, and that they were all of opinion that it is an indictable offence fraudulently to obtain goods by giving in payment a cheque upon a banker with whom the party keeps no cash, and which he knows will not be paid. (*R. v. Jackson, 3 Camp. 370*.)

Placing a false mark on a spurious article so as to pass it off as genuine, and so obtaining money, is a cheat at common law. (*Reg. v. Closs, D. & B. 460*; and see *post, 275*, as to false representations made during a sale or contract.)

On the other hand, all cheats and frauds affecting or which may affect the public, are in general offences at common law, if effected by some deceitful and illegal practice or token, and they be such against which common prudence could not have guarded; and this notwithstanding they arise out of a particular transaction or contract.

But frauds affecting the public are frauds against public justice.

Therefore cheats and frauds against the public justice of this realm are offences at common law. (2 *East's P. C. c. 18, s. 4*.) As where a person, being committed to gaol under an attachment for a contempt in a civil cause, counterfeited a pretended discharge, as from his creditor, to the sheriff and gaoler, under which he obtained his discharge; he was held guilty of an offence at common law, in thus effecting an interruption to public justice, although the attachment not being for non-payment of money, the order was in itself a mere nullity, and no warrant to the sheriff for the discharge. (*R. v. Favcett, 2 East's P. C. c. 19, ss. 7, 45*; and see *Omcaley v. Newell, 8 East, 364*; 1 *Russ. C. & M. 275, 3rd edit.*; and see, as to falsely personating bail, *tit. "Bail," Vol. I.*)

(t) *Cheats at Common Law.*

Falsely pretending to discharge soldiers.

Enlistment by an apprentice.

A person falsely pretending that he had power to discharge soldiers, took money of a soldier to discharge him, and being indicted for the same, the Court held the indictment to be good. (*Serlestead's case*, 1 *Latch*, 202.)

So obtaining the Queen's bounty for enlisting as a soldier by an apprentice, reclaimable by his master, is an offence at common law. (*R. v. Jones*, Coventry Lent Assizes, 1777; 2 *East's P. C.* 822; 1 *Leach*, 174.)

Counterfeit pass.

So a person for a counterfeit pass was adjudged to the pillory, and fined. (*Dalt. c. 32.*)

So the offence will be complete, though the fraud or cheat arise out of a particular transaction or contract with the offender.

Thus, an indictment lies for wilfully, deceitfully, and maliciously supplying prisoners of war with unwholesome food, not fit to be eaten by man. (*Treve's case*, 2 *East's P. C.* 821.)

Selling unwholesome food.

So it has been held an indictable offence at common law for a baker to sell bread containing alum in a shape which renders it noxious, although he gave directions to his servants to mix it up in a manner that would have rendered it harmless. (*R. v. Dixon*, 4 *Camp.* 122; 3 *M. & Sel.* 11, *S. C.*)

Miller changing corn.

So on an indictment against the defendant, a miller, for changing corn, and returning bad corn instead of it, it was considered maintainable; for, being a cheat in the way of trade, it is deemed an offence against the *public*. (*R. v. Wood*, 1 *Sess. Ca.* 217.) But in a later case, it was held not indictable for a miller receiving good barley to grind at his mill, to deliver a musty and unwholesome mixture of oat and barley-meal, different from the produce of the barley: and Lord *Ellenborough*, C.J., there said, "The allegation that the quantity (of meal) delivered was musty and unwholesome, if it had alleged that the defendant delivered it as an article for the food of man, might possibly have sustained the indictment: but I cannot say that its being musty and unwholesome necessarily and *ex vi termini* imports that it was for the food of man, and it is not stated that it was to be used for the sustentation of man, only that it was a mixture of oat and barley-meal. As to the other point, that this is not an indictable offence, because it respects a matter transacted in the course of trade, and where no tokens were exhibited by which the party acquired any greater decree of credit; if the case had been that this miller was owner of a soke mill, to which the inhabitants of the vicinage were bound to resort in order to get their corn ground, and that the miller, observing the confidence of this his situation, had made it a colour for practising a fraud, this might have presented a different aspect; but as it is, it seems no more than the case of a common tradesman, who is guilty of a fraud in a matter of trade or dealing." (*R. v. Haynes*, 4 *M. & Sel.* 214.)

False weights.

If a person sell by false weights, though only to one person, it is an indictable cheat; but it would be otherwise if he sold without false weights a *less quantity* than he pretended to sell, unless he used any artful method to cheat. (*R. v. Young*, 3 *T. R.* 104; and see *R. v. Nicholson*, cited in *R. v. Wheatley*, *ante*, 270; and *R. v. Dunnage*, 2 *Burr.* 1130; and *Reg. v. Eagleton*, *Dears. C. C.* 376 and 515.)

Using false dice.

Cheating by means of false dice, etc., is an offence at common law. (*R. v. Leaser*, *Oro. Jac.* 497; *R. v. Maddox*, 2 *Roll. R.* 107.) It is also now an offence by statute. (See tit. "*Gaming*," *Vol. II.*)

A minor going about pretending to be of age.

As there are frauds which may be relieved civilly, and not punished criminally (with the complaints whereof the courts of equity do generally abound), so there are other frauds, which in a special case may not be

helped civilly, and yet shall be punished criminally: thus, if a minor go about the town, and, pretending to be of age, defraud many persons by taking credit for considerable quantities of goods, and then insist on his nonage, the persons injured cannot recover the value of their goods; but they may indict and punish him for a *common cheat*. (*Barl.* 100.)

(t) *Cheats at Common Law.*

Writers of *false news* are indictable; for it is an offence at common law; and it would perhaps be held at the present day that the fabrication of false news, calculated to produce any public detriment, would be an offence. (See *Stark. Libel*, 546; 2 *Russ. C. & M.* 278.)

False news.

The rendering false accounts or refusing to account, etc., by persons in official situations; such as persons in the pay office (*R. v. Bembridge*, 6 *East*, 136), churchwardens (*R. v. Commings*, 5 *Mod.* 179; *R. v. Martin*, 3 *Chit. Crim. L.* 701), surveyor of highways (*Robinson's case*, 3 *Chit. Crim. L.* 666), minister of a parish (*R. v. Minister of St. Botolph*, 1 *Bl. R.* 443), parish officers (*R. v. Tarrant*, 4 *Burr.* 2106; 3 *Chit. Crim. L.* 698, *et seq.*) is indictable.

If a person maim himself in order to have a more specious pretence for asking charity, or to prevent being enlisted as a soldier, it is an indictable offence. (1 *Hawk. P. C.* c. 35.)

As regards the form of the indictment, where the fraud has been effected by false tokens, and the offence is so charged, the false tokens must be specified and set forth. It is not sufficient to allege generally that the cheat was effected by certain false tokens or false pretences. (2 *East's P. C.* c. 18, s. 13, p. 837.)

Form of indictment.

But it does not seem to be necessary to describe them more particularly than they were shown or described to the party at the time, and in consequence of which he was imposed upon; and it is also said not to be necessary to make any express allegation that the facts set forth show a false token. (2 *East's P. C.* c. 18, s. 13, p. 838.)

An objection appears to have been made to one of the counts of an indictment for a cheat at common law, that it charged the false pretence to have been made to one person, and the deceit to have been practised on a different person. (*Lara's case*, 2 *Leach*, 647. But see *R. v. Douglas*, 1 *Campb.* 212, where the pretence was made to a servant, but the money of the mistress obtained; and *R. v. Moseley*, 31 *L. J., M. C.* 24.)

The offence is punishable by fine or imprisonment, or both, like any other misdemeanour. (1 *Hawk. c.* 71, s. 3.)

Punishment.

#### BY STATUTES.

Besides the 24 & 25 *Vict. c.* 96, ss. 88–90, noticed below, there are various other statutes protecting the public and parties against the cheats and frauds of others, which will be found noticed under their proper titles in other parts of this work.

By other statutes.

As to the offence of a bankrupt's obtaining goods under a false pretence of carrying on business in the ordinary course of trade, see tit. "*Bankrupt*," *Vol. I.*

Bankrupts.

As to frauds and cheats by servants and others in trades, see tit. "*Servants*," *Vol. V.*

Servants.

As to giving false characters to servants, see tit. "*Servants*," *Vol. V.*  
As to apprentices fraudulently enlisting themselves, see tit. "*Military Law*," *post*.

Apprentices.

As to frauds by the false personation of soldiers, see tit. "*Military Law*," *post*; and of sailors, see tit. "*Seamen*," *Vol. V.*

Soldiers.

As to the false personation of bail, see tit. "*Bail*," *Vol. I.*

Bail.

(u) *Obtaining Money, etc., by False Pretences.*

Gaming.

Weights.

Fortune-telling.

Fraudulent conveyances.

As to frauds by gaming, see tit. "*Gaming*," Vol. II.

As to false weights, see tit. "*Weights and Measures*," Vol. V.

As to the offence of telling fortunes, see tit. "*Witchcraft*," Vol. V.

By the 13 Eliz. c. 5, fraudulent conveyances, judgments, etc., are declared void, and the parties to them are made subject to a forfeiture of a year's value of the lands, etc., and to imprisonment for half a year. See 2 *Chit. Stat.* 179.

And the 27 Eliz. c. 4, enacts that fraudulent conveyances made to deceive purchasers shall be void, and that the parties thereto shall forfeit a year's value of the lands, etc., and be imprisoned for half a year.

(u) OBTAINING MONEY, ETC., BY FALSE PRETENCES.

False pretences.

No acquittal because the offence amounts to larceny.

Form of indictment and evidence.

By the 24 & 25 Vict. c. 96, s. 88, "Whosoever shall by any false pretence obtain from any other person any chattel, money, or valuable security, with intent to defraud, shall be guilty of a misdemeanour, and, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement: Provided that, if upon the trial of any person indicted for such misdemeanour it shall be proved that he obtained the property in question in any such manner as to amount in law to larceny, he shall not by reason thereof be entitled to be acquitted of such misdemeanour; and no person tried for such misdemeanour shall be liable to be afterwards prosecuted for larceny upon the same facts: Provided also, that it shall be sufficient in any indictment for obtaining or attempting to obtain any such property by false pretences, to allege that the party accused did the act with intent to defraud, without alleging an intent to defraud any particular person, and without alleging any ownership of the chattel, money, or valuable security; and on the trial of any such indictment it shall not be necessary to prove an intent to defraud any particular person, but it shall be sufficient to prove that the party accused did the act charged with an intent to defraud."

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

For "cheats and frauds at common law," see *ante*, 269.

To defraud is to cheat.

The word "cheat" has been omitted in the present section, because to "defraud" has been held to mean to "cheat a person out of something." (*Reg. v. Ingham, Bell, C. C.* 181.)

The false pretence must be stated.

It must be of some existing fact.

The pretence must be set out in the indictment (*R. v. Mason, 2 T. R.* 581); and it must be stated to be false (*R. v. Airey, 2 East, P. C.* 30; *R. v. Perrott, 2 M. & S.* 379); and it must be of some existing fact; a pretence that the defendant will do some act (*R. v. Goodall, R. & R. C. C.* 461; *Reg. v. Johnston, 2 Moo. C. C.* 254), or that he has got to do some act is not sufficient. (*Reg. v. Lee, Leigh & Cave, 309.*) Where the pretence is partly a misrepresentation of an existing fact, and partly a promise to do some act, the defendant may be convicted if the property is parted with in consequence of the misrepresentation of fact, although the promise also acted upon the prosecutor's mind. (*Reg. v. Fry, Dears. & B. C. C.* 449; *Reg. v. West, Ib.* 575; *R. v. Jennison, Leigh & Cave, 157.*)

Where the pretence, gathered from all the circumstances, was that the prisoner had power to bring back the husband of the prosecutrix, though the words used were merely promissory that she (the prisoner) would bring him back, it was held a sufficient pretence of an existing fact. (*Reg. v. Maria Giles, 34 L. J., M. C.* 50.) But, where the false pretence alleged was that H. P. was to give the prisoner 10s., and that Madame T. was "going to allow" him 10s. a week, it was held (*Blackburn, J., and*

*Pigott, B., dubitantibus*) that there was no allegation of a false pretence of an existing fact. (*Reg. v. Henshaw*, 33 *L. J., M. C.* 132.)

So the defendant may be convicted, although the pretence is of some existing fact, the falsehood of which might have been ascertained by inquiry by the party defrauded (*R. v. Wickham*, 10 *Ad. & E.* 34; *Reg. v. Wooley*, 1 *Den. C. C.* 559; *Reg. v. Ball, Car. & M.* 249; *Reg. v. Roebuck, Dears. & B. C. C.* 24), or against which common prudence might have guarded. (*R. v. Young*, 3 *T. R.* 98; *Reg. v. Jessop, Dears. & B. C. C.* 442; *Reg. v. Hughes*, 1 *F. & F.* 355.) If, however, the prosecutor knows the pretence to be false (*Reg. v. Mills, Dears. & B. C. C.* 205); or does not part with the goods in consequence of the defendant's representation (*Reg. v. Roebuck, Dears. & B. C. C.* 24); or parts with them before the representation is made (*Reg. v. Brooks*, 1 *F. & F.* 502); or in consequence of a representation as to some future fact (*R. v. Dale*, 7 *Car. & P.* 352); or if the obtaining of the goods is too remotely connected with the false pretence, which is a question for the jury (*Reg. v. Gardner, Dears. & B. C. C.* 40; see *R. v. Martin*, *L. R.* 1 *C. C. R.* 56); or the prosecutor continues to be interested in the money alleged to have been obtained, e.g. as partner with the defendant (*Reg. v. Watson, Dears. & B. C. C.* 348; see *Reg. v. Evans, Leigh & Cave*, 252; 32 *L. J., M. C.* 38); or the object of the false pretence is something else than the obtaining of the money (*Reg. v. Stone*, 1 *F. & F.* 311); the defendant cannot be convicted.

Falsely pretending that he has bought goods to a certain amount, and presenting a check-ticket for them (*R. v. Barnes*, 2 *Den. C. C.* 59); or overstating a sum due for dock dues or customs duties (*Reg. v. Thompson*, *L. & C.* 233); will render the prisoner liable to be convicted under the statute.

The pretence need not be in words, but may consist of the acts and conduct of the defendant. Thus, the giving a cheque on a banker with whom the defendant has no account (*R. v. Flint, R. & R. C. C.* 460; *R. v. Jackson*, 3 *Campb.* 370; *R. v. Parker*, 2 *Moo. C. C.* 1; *R. v. Spencer*, 3 *Car. & P.* 420; *Reg. v. Wickham*, 10 *Ad. & E.* 34; *Reg. v. Philpott*, 1 *Car. & K.* 112; and see also *Freeth's case*, *R. & R.* 127); or the fraudulently assuming the name of another to whom money is payable (*R. v. Story*, *R. & R. C. C.* 81; *Reg. v. Jones*, 2 *Den. C. C.* 551); or the fraudulently assuming the dress of a member of one of the universities (*R. v. Barnard*, 2 *Car. & P.* 784); is a false pretence within the statute. (See also *Reg. v. Giles*, *L. & C.* 502.)

So there may be a false pretence made in the course of a contract, by which money is obtained under the contract (*Reg. v. Kenrick*, 5 *Q. B.* 49; *Reg. v. Abbott*, 1 *Den. C. C.* 173; *Reg. v. Burgon, Dears. & B. C. C.* 11; *Reg. v. Roebuck, Dears. & B. C. C.* 24); as to the weight or quantity of goods sold, when sold by weight or quantity. (*Reg. v. Sherwood, Dears. & B. C. C.* 251; *Reg. v. Bryan, Dears. & B. C. C.* 265; *Reg. v. Ragg, Bell, C. C.* 214; *Reg. v. Goss, Bell, C. C.* 208; *Reg. v. Ridgway*, 3 *F. & F.* 838; *Reg. v. Lees, L. & C.* 418; 35 *L. J., M. C.* 171.)

So, also, as to falsely representing goods as being of a well-known sort or substance. (*Reg. v. Smith, Dears. & B.* 566; *Reg. v. Ball, C. & M.* 249; *Reg. v. Roebuck, Dears. & B.* 24.)

But a mere false representation as to quality is not indictable. (*Reg. v. Bryan, Dears. & B. C. C.* 265; *Reg. v. Pratt*, 8 *Cox, C. C.* 334.) Thus, representing a chain to be gold, which turns out to be made of brass, silver, and gold, the latter very minute in quantity, is not within the statute. (*Reg. v. Lee*, 8 *Cox, C. C.* 233, *sed quare*.) Nor making a false statement as to weight or quantity, when not selling by weight or quantity, but in the lump. (See *R. v. Ridgway* and *R. v. Lee, supra*.) Nor is a false pretence that more money is due to the defendant for

(u) *Obtaining Money, etc., by False Pretences.*

Where pretence is or might be known to be false, or is not the cause of the obtaining.

What is a false pretence.

May consist of acts, not words.

Or be made in a contract.

As to weight or quantity.

As to kind.

As to quality

As to weight or quantity.

Overcharge.



(u) *Obtaining Money, etc., by False Pretences.*

Excuse.

executing certain work than is actually due within the statute; for that is a mere wrongful overcharge. (*Reg. v. Oates, Dears. C. C. 459.*) So, where the defendant pretended to a parish officer, as an excuse for not working, that he had no clothes, and thereby obtained some from the officer, it was held that he was not indictable, the statement being rather a false excuse for not working than a false pretence to obtain goods. (*R. v. Wakeling, R. & R. C. C. 504.*)

Pretending to be a single man.

Where the prisoner pretended first that he was a single man, and next that he had a right to bring an action for breach of promise, and the prosecutrix said that she was induced to pay him money by the threat of the action, but she should not have paid it had she known the defendant to be a married man, it was held that either of these two false pretences was sufficient to bring the case within the statute. (*Reg. v. Copeland, C. & M. 516; Reg. v. Jennison, Leigh & Cave, 157.*)

To have power to do an act.

Where the defendant said she had power to bring a man over hedges and ditches, and would do so, it was held a false pretence, and not a mere promise. (*R. v. Giles, L. & C. 502; 34 L. J., M. C. 50.*)

To know a rich man.

Where the prisoner represented that he was connected with J. S., and that J. S. was a very rich man, and obtained goods by that false representation, it was held within the statute. (*Reg. v. Archer, Dears. C. C. 449.*)

To be a medical man.

Obtaining by means of falsely pretending to be a medical man (*Reg. v. Bloomfield, C. & M. 537*), or an attorney (*R. v. Asterley, 7 C. & P. 191*), is within the statute.

Or an attorney.

Money obtained by way of loan.

It is no objection that the moneys have been obtained only by way of a loan (*R. v. Crossley, 2 M. & Rob. 17*); but perhaps this is true only of moneys, and not of other goods. (See *Russell on Crimes, vol. ii. 4th ed.*) Obtaining goods by false pretences intending to pay for them is within the section. (*Reg. v. Naylor, 35 L. J., M. C. 61.*)

It must be stated and proved that defendant knew the pretence was false.

It must be alleged and proved that the defendant knew the pretence to be false at the time of making it. (*Reg. v. Henderson, 2 Moo. C. C. 192; Reg. v. Philpotts, 1 C. & K. 112.*) After verdict, however, an indictment following the words of the statute is sufficient. (*Reg. v. Bowen, 19 L. J., M. C. 109; 13 Q. B. 790; Hamilton v. Reg., 9 Q. B. 271.*) It is no defence that the prosecutor laid a trap to draw the prisoner into the commission of the offence. (*Reg. v. Adamson, 2 Moo. C. C. 286; R. v. Ady, 7 C. & P. 140.*) A pretence made to A. in B.'s hearing is made to B. (*Reg. v. Dent, 1 Car. & K. 249.*) And an allegation that a false pretence was made to A. and others is supported by proof of its being made to A. (*Reg. v. Kealey, 2 Den. C. C. 68.*) The pretence need not be made to the same person from whom the money was obtained; and, when the indictment alleges that it was "by means of the said false pretences" the money was obtained, that becomes a question of evidence:—Did the pretence to A. operate upon the mind of B? (*Reg. v. Brown, 2 Cox, C. C. 348.* See also *Reg. v. Moseley, L. & C. 92; 31 L. J., M. C. 24.*)

The thing obtained need not exist at time of pretence.

It is not necessary that the goods obtained should be in existence at the time the false pretence is made, provided the subsequent delivery of the goods is directly connected with the false pretence; and such connection is a question for the jury. (*R. v. Martin, L. R. 1 C. C. R. 56.*) It is sufficient to set out in the indictment, and prove, the main pretence which operated on the prosecutor's mind, although there may have been other matters which, in some measure, led to his parting with the property. (*Reg. v. Heogill, Dears. C. C. 315.*) It is sufficient to state the effect of the pretence correctly. (See *R. v. Scott, Russell on Crimes, vol. ii. p. 671.*) The indictment must negative the pretences by special averment. (*R. v. Perrott, 2 M. & S. 379, 386; Hamilton v. Reg. 9*

The effect of the pretence must be stated.

Indictment must negative the pretences.

Q. B. 271.) The false pretence must be proved as laid; any variance will be fatal unless amended. (*R. v. Plestow*, 1 Campb. 494; *R. v. Douglas*, 1b. 212.) But proof of part of the pretence, and that the money was obtained by such part, is sufficient. (*R. v. Hill*, *R. v. R. C. C.* 190; *Reg. v. Wickham*, 10 Ad. & E. 34; *Reg. v. Bates*, 3 Cox, C. C. 201.) But the goods must be obtained by means of some of the pretences laid. (*R. v. Dale*, 7 C. & P. 352. See *Reg. v. Hunt*, 8 Cox, C. C. 495.) And, where the indictment alleged a pretence which in fact the prisoner did at first pretend, but the prosecutor parted with his property in consequence of a subsequent pretence which was not alleged, it was held that the evidence did not support the indictment. (*R. v. Bulmer*, L. & C. 476.)

(u) *Obtaining Money, etc., by False Pretences.*

They must be proved as laid.

The property must be obtained by means of the false pretence; and a subsequent pretence will not make an obtaining within the statute. (*Reg. v. Brooks*, 1 F. & F. 502.)

Subsequent false pretence.

Where money is obtained by the joint effect of several misstatements, some of which are not, and some are, false pretences within the statute, the defendant may be convicted. (*Reg. v. Jennison*, L. & C. 157; 31 L. J., M. C. 146.)

Effect of several false pretences.

Parol evidence of the false pretence may be given, although a deed between the parties, stating a different consideration for parting with the money, is produced, such deed having been made for the purpose of the fraud. (*Reg. v. Adamson*, 2 Moo. C. C. 286.) So also parol evidence of a lost written pretence may be given. (*R. v. Chadwick*, 6 C. & P. 181.) On an indictment for obtaining money from A., evidence that the prisoner about the same time obtained money from other persons by similar false pretences is not admissible. (*Reg. v. Holt*, 30 L. J., M. C. 11.) But other false pretences at other times to the same person are admissible; and it is for the jury to determine whether they were connected or not. (*R. v. Welman*, Dears. C. C. 188. And see also *Reg. v. Hamilton*, 1 Cox, C. C. 244.)

Parol evidence where written pretence is fraudulent or lost.

Evidence of other false pretences.

Where the money is sent in a letter, it is obtained in the county where the letter is posted; and the defendant is consequently triable there. (*Reg. v. Jones*, 1 Den. C. C. 551; *Reg. v. Leech*, Dears. C. C. 642.) So, where the false pretence is made in a letter, the defendant may be tried in the county where the letter is posted. (*Reg. v. Cooke*, 1 F. & F. 64.)

What an obtaining. Venue.

The venue was laid in Essex. Sheep were obtained in Middlesex and conveyed into Essex; it was held that the prisoner was indicted in the wrong county. (*Reg. v. Stanbury*, L. & C. 128.)

If the defendant from any cause fails to obtain the property, as where he obtained credit, but was detected before the time for payment arrived (*Reg. v. Eagleton*, Dears. C. C. 515), he may be indicted for attempting to commit the misdemeanour. In such an indictment the nature of the attempt, and the means by which the defendant endeavoured to carry his fraud into effect, must be set out with reasonable certainty. (*Reg. v. Marsh*, 1 Den. C. C. 505.)

Attempt.

A dog is not a chattel within this section. (*Reg. v. Robinson*, Bell, C. C. 34.)

Chattel.

Inducing a person by a false pretence to accept a bill of exchange is not within this section. (*Reg. v. Danger*, Dears. & B. C. C. 307.) In such a case, therefore, the offender should be indicted under sect. 90, *post*, 279.

What is a valuable security.

A railway ticket is a valuable security. (*Reg. v. Boulton*, 1 Den. C. C. 508. And see *R. v. Beecham*, 5 Cox, C. C. 181.) And so is an order by the president of a burial society on the treasurer for the payment of money. (*Reg. v. Greenhaigh*, Dears. C. C. 267.) But an in-

(u) *Obtaining Money, etc., by False Pretences.*

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strument which is invalid from want of a stamp is not. (*R. v. Yates*, 1 *Moo. C. C.* 170. And see sect. 1, 27, *ante*, 226, 236.) Where the defendant only obtains credit and not any specific sum by the false pretence, it is not within the Act. (*R. v. Wavill*, 1 *Moo. C. C.* 224; *Reg. v. Garrett*, *Dears. C. C.* 233; *Reg. v. Crosby*, 1 *Cox, C. C.* 10.)

"Intent to defraud."

There must be an intent to defraud. Where C., B.'s servant, obtained goods from A.'s wife by false pretences, in order to enable B., his master, to pay himself a debt due from A., of which he could not obtain payment from A., it was held that C. could not be convicted. (*R. v. Williams*, 7 *Car. & P.* 554.) So, if the object of the false pretence is something else than the obtaining of the money, the charge cannot be sustained. (*Reg. v. Stone*, 1 *F. & F.* 311.) Where the defendants were charged with obtaining money by colour and pretence of their being collectors of the property tax, and it appeared in evidence that they had in fact been appointed collectors by the commissioners, though in an informal manner, it was held not to be within the meaning of the Act. (*R. v. Dobson*, 7 *East*, 211.)

Where the jury found that the prisoner obtained the goods by false pretences, but intended to pay for them when he could do so, the prisoner was held rightly convicted. (*Reg. v. Naylor*, 35 *L. J., M. C.* 61.)

It is not necessary to state the intent.

It is not necessary to allege that the pretence was made with intent to obtain the money, or to show how it was calculated to do so. (*Hamilton v. Reg.*, 9 *Q. B.* 271.)

Persons assisting are principals.

All persons who concur and assist in the fraud are principals, though not present at the time of making the pretence or obtaining the property. (*Reg. v. Moland*, 2 *Moo. C. C.* 376; *Reg. v. Kerrigan*, *L. & C.* 383; 33 *L. J., M. C.* 71; 24 & 25 *Vict. c.* 94, s. 8.)

Indictment for a false pretence will be supported by evidence of a larceny, but not *vice versa*.

It is provided by this section of the Act that, upon an indictment for this misdemeanour, the defendant will not be entitled to an acquittal, if the proof shows a larceny to have been committed; but, if the defendant is indicted for larceny, he cannot be convicted for obtaining by false pretences. Where, therefore, the nature of the crime is doubtful, it will be safer to indict the defendant for the latter offence. It should be observed that, where the indictment is for the misdemeanour, such misdemeanour must be proved as laid, the effect of this section of the Act being to provide that the prisoner shall not be acquitted of the misdemeanour merely by reason of its being merged in the felony. (See *per Crompton, J.*, *Reg. v. Bulmer*, *L. & C.* 482.)

Indictment not to be preferred unless authorized.

The offence of obtaining money by false pretences is one of those included in the provisions of the Vexatious Indictments Act, 22 & 23 *Vict. c.* 17, s. 1, which is amended by the 30 & 31 *Vict. c.* 35, s. 1. By the former Act no indictment for this offence can be "presented to or found by any grand jury, unless the prosecutor or other person presenting such indictment has been bound by recognizance to prosecute or give evidence against the person accused of such offence, or unless the person accused has been committed to or detained in custody, or has been bound by recognizance to appear to answer to an indictment to be preferred against him for such offence, or unless such indictment for such offence, if charged to have been committed in England, be preferred by the direction or with the consent in writing of a judge of one of the superior Courts of law at Westminster, or of her Majesty's attorney-general or solicitor-general for England, or unless such indictment for such offence, if charged to have been committed in Ireland, be preferred by the direction or with the consent in writing of a judge of one of the superior Courts of law in Dublin, or of her Majesty's attorney-general or solicitor-general for Ireland, or (in the case of an indictment for perjury) by the direction of any Court, judge, or public functionary authorized by the

14 & 15 Vict. c. 100, to direct a prosecution for perjury." And by the latter Act it is provided by sect. 1, that "the said provisions of the said first section of the said Act shall not extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment containing a count or counts for any of the offences mentioned in the said Act, if such count or counts be such as may now be lawfully joined with the rest of such bill of indictment, and if the same count or counts be founded (in the opinion of the Court in or before which the same bill of indictment be preferred) upon the facts or evidence disclosed in any examinations or depositions taken before a justice of the peace in the presence of the person accused or proposed to be accused by such bill of indictment, and transmitted or delivered to such Court in due course of law; and nothing in the said Act shall extend or be applicable to prevent the presentment to or finding by a grand jury of any bill of indictment, if such bill be presented to the grand jury with the consent of the Court in or before which the same may be preferred."

(v) *Receiving Stolen Goods.*

By the 24 & 25 Vict. c. 96, s. 89, "Whosoever shall by any false pretence cause or procure any money to be paid, or any chattel, or valuable security, to be delivered to any other person, for the use or benefit or on account of the person making such false pretence, or of any other person, with intent to defraud, shall be deemed to have obtained such money, chattel, or valuable security within the meaning of the last preceding section."

Where any money or thing is caused to be paid or delivered to any person other than the person making a false pretence.

This clause is entirely new, and is constructed so as to get rid of the law laid down in *R. v. Garrett* (*Dears. C. C.* 232), where it was held that to "obtain" meant to "acquire" for the party's own benefit.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

By sect. 90, "Whosoever, with intent to defraud or injure any other person, shall by any false pretence fraudulently cause or induce any other person to execute, make, accept, indorse, or destroy the whole or any part of any valuable security, or to write, impress, or affix his name, or the name of any other person, or of any company, firm, or copartnership, or the seal of any body corporate, company, or society, upon any paper or parchment, in order that the same may be afterwards made or converted into or used or dealt with as a valuable security, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement."

Inducing persons by fraud to execute deeds and other instruments.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

This enactment is said to have been first introduced in consequence of the decision in *Reg. v. Danger*, *Dears. & B. C. C.* 307, in which it was held that the obtaining by false pretences the signature of the prosecutor to an acceptance of a bill of exchange, produced to him for that purpose by the defendant, with intent to defraud, was not an obtaining of a valuable security within the 7 & 8 Geo. 4, c. 29, s. 50.

#### (v) RECEIVING STOLEN GOODS.

By sect. 91, "Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, extorting, obtaining, embezzling, or otherwise disposing whereof shall amount to a felony, either at common law or by virtue of this Act, knowing the same to have been feloniously stolen, taken, extorted, obtained, embezzled, or disposed of, shall be guilty of felony, and may be indicted and convicted either as an accessory after the fact or for a substantive felony, and, in the latter case, whether the principal felon shall or shall not have been previously convicted, or shall or shall not be amenable to justice; and every such receiver, howsoever convicted, shall be liable, at the discretion

Receiving, where the principal is guilty of felony

(v) Receiving Stolen Goods.

of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping: provided that no person, howsoever tried for receiving as aforesaid, shall be liable to be prosecuted a second time for the same offence."

Receivers of stolen goods were only punishable as for a misdemeanour at common law, even after the thief had been convicted of felony. (*Fost.* 373.)

As to aiders, abettors, and accessories generally, see tit. "Accessory," Vol. I.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

As to "property," see sect. 1, *ante*, 226.

"Receive."

The goods must be so received as to divest the possession out of the thief. (*Reg. v. Wiley*, 2 Den. C. C. 37.) But a person having a joint possession with the thief may be convicted as a receiver. (*Reg. v. Smith, Dears. C. C.* 494.) Manual possession is unnecessary; it is sufficient if the receiver has a control over the goods. (*Ib.*; *Reg. v. Hobson*, *Ib.* 400.) The defendant may be convicted of receiving, although he assisted in the theft. (*R. v. Dyer*, 2 East, P. C. 767; *R. v. Atwell*, *ib.*; *Reg. v. Craddock*, 2 Den. C. C. 31; *Reg. v. Hilton, Bell, C. C.* 20; *Reg. v. Hughes, Bell, C. C.* 242.) But not, if he actually stole the goods. (*Reg. v. Perkins*, 2 Den. C. C. 459.) Where the jury found that a wife received the goods without the knowledge or control of her husband, and apart from him, and that he afterwards adopted his wife's receipt, no active receipt on his part being shown, it was held that the conviction of the husband could not be sustained. (*Reg. v. Dring, Dears. & B. C. C.* 329.) But, where the wife received the goods, and paid sixpence on account to the thief, and the husband afterwards met the thief, and paid the balance, it was held he was guilty of receiving. (*Reg. v. Woodward, L. & C.* 122; 31 L. J., M. C. 91.)

There must be a receiving of the thing stolen or of a part of it.

Where A. stole six notes of £100 each, and, having changed them into notes of £20 each, gave some of them to B., it was held that B. could not be convicted of receiving the said notes; for he did not receive the notes that were stolen. (*R. v. Walkley*, 4 Car. & P. 132.) But, where the principal was charged with sheep-stealing, and the accessory with receiving "twenty pounds of mutton, parcel of the goods," etc., it was held good. (*R. v. Cowell*, 2 East, P. C. 617, 781.) Where the prisoner was charged with stealing certain goods, and in a second count with receiving "the goods and chattels aforesaid, so as aforesaid stolen," the indictment was held good; and a conviction upon the second count after an acquittal upon the first was supported. (*Reg. v. Huntley, Bell, C. C.* 238; *S. C.* 29 L. J., M. C. 170.) So the prisoner may be convicted of receiving, although the evidence is also consistent with his having been a principal in the second degree in the stealing. (*Reg. v. Hilton, Bell, C. C.* 20.)

The receiving must be subsequent to the theft.

If a servant commit a larceny at the time the goods are received, both servant and receiver are principals; but, if the goods are received subsequently to the act of larceny, it becomes a case of principal and receiver. (*R. v. Butteris*, 6 C. & P. 147; *Reg. v. Gunnell*, 9 C. & P. 365; *Reg. v. Roberts*, 3 Cox, C. C. 74.)

The receiving need not be *lucri causa*.

It is sufficient if the prisoner receive the goods, knowing them to be stolen, though he gain nothing by them, if it be for concealment or to assist the thief. (*R. v. Richardson*, 6 C. & P. 335; *R. v. Davis*, 6 C. & P. 177.)

There should be evidence of the theft by another.

There should be some evidence that another person stole the goods, in order to convict the prisoner of receiving them. (*R. v. Densley*, 6 C. & P. 177.)

P. 399. And see *Reg. v. Dear, Leigh & Cave*, 240; and *R. v. Cordy*, (v) *Receiving Stolen Goods*.  
*Russell on Crimes*, vol. ii. 4th ed. p. 556.)

A husband may be convicted of receiving property which his wife has voluntarily stolen. (*Reg. v. M'Athey, L. & C.* 250.)

Husband where wife is principal.

Even under the repealed section which did not refer to embezzlement, it was held that the defendant could be convicted of receiving *embezzled* goods, embezzlement being deemed larceny by the 7 & 8 Geo. 4, c. 29, s. 47. (See *Reg. v. Frampton, Dears. & B.* 585.)

"Embezzling."

An indictment for receiving goods obtained by false pretences should state that they were so obtained, and that the receiver knew it. (*R. v. Wilson*, 2 *Moo. C. C.* 52; *Reg. v. Rymes*, 3 *C. & K.* 326.) And it seems the false pretences should be alleged in the same way as in the case of an indictment for obtaining goods by false pretences. (*Russell on Crimes*, vol. ii. p. 554, 4th ed.) And see sect. 95, *post*, 283.

False pretences.

Where the thief, having been detected, sold the goods to the prisoner with the consent of the owner, it was held that there was no receipt of stolen goods. (*Reg. v. Dolan, Dears. C. C.* 436. See also *Reg. v. Schmidt, L. R.*, 1 *C. C. R.* 15.) The principal felon is a competent witness to prove the larceny. (*R. v. Haslam*, 1 *Leach, C. C.* 418.) But his confession is not evidence against the receiver (*R. v. Turner*, 1 *Moo. C. C.* 347), unless made in his presence, and assented to by him. (*Reg. v. Cox*, 1 *F. & F.* 90.) The defendant may disprove the guilt of the principal. (*Fost.* 365.) If the principal has been convicted, the record of his conviction, although erroneous, is evidence against the receiver until reversed. (*R. v. Baldwin, R. v. R. C. C.* 241.) It need not appear on the record that the principal was attainted. (*Ib.*; *R. v. Hynan*, 2 *East, P. C.* 782.)

The goods must have been stolen.

To prove guilty knowledge, other instances of receiving similar goods stolen from the same person may be given in evidence, although they form the subject of other indictments, or are antecedent to the receiving in question. (*R. v. Dunn*, 1 *Moo. C. C.* 146; *R. v. Davis*, 6 *Car. & P.* 177; *Reg. v. Nicholls*, 1 *F. & F.* 51; *Reg. v. Mansfield, C. & M.* 140.) But evidence cannot be given of the possession of goods stolen from a different person. (*Reg. v. Oddy*, 2 *Den. C. C.* 264.) Where the stolen goods are goods that have been found, the jury must be satisfied that the prisoner knew that the circumstances of the finding were such as to constitute larceny. (*R. v. Adams*, 1 *F. & F.* 86.) Where the thief had at one time been lawfully employed to sell articles similar to those stolen to the prisoner, it was held that, in the absence of any evidence that the prisoner knew that the authority had been withdrawn, he should be acquitted. (*Reg. v. Wood*, 1 *F. & F.* 497.) Belief that the goods are stolen, without actual knowledge that they are so, is sufficient to sustain a conviction. (*Reg. v. White*, 1 *F. & F.* 665.)

Proof of guilty knowledge.

Recent possession of stolen property may support the presumption either that the prisoner is the thief or that he is the receiver, according to the circumstances of the case. In *R. v. Langmead (L. & C.* 427), the presumption was made that the prisoner was the receiver. And see tit. "*Larceny at Common Law*," ante, 225.

Presumption from recent possession.

An indictment for the substantive felony need not state by whom the principal felony was committed. (*R. v. Jervis*, 6 *Car. P.* 166; *R. v. Caspar*, 2 *Moo. C. C.* 101.) But, if it do, a variance will be fatal unless amended. (*R. v. Woodford*, 1 *M. & Rob.* 384.) If the indictment state the larceny to have been committed by some person unknown, it is no objection that the grand jury at the same assizes find a bill for the principal felony against J. S. (*R. v. Bush, R. & R. C. C.* 372.) An indictment charging that a certain evil-disposed person feloniously stole certain goods, and that C. D. feloniously received the said goods, knowing

Indictment for the substantive felony.

(v) Receiving Stolen Goods.

them to be stolen, was held good against the receiver, as for a substantive felony. (*R. v. Caspar*, 2 Moo. C. C. 101.) Where three persons were charged with larceny, and two others as accessories, in separately receiving portions of the stolen goods, and the indictment contained also two other counts, each of them charging one of the receivers separately with a substantive felony in separately receiving a portion of the stolen goods, it was ruled that, though the principals were acquitted, the receivers might be convicted on the last two counts of the indictment. (*Reg. v. Pulham*, 9 Car. & P. 280; *Reg. v. Hayes*, 2 M. & Rob. 156.)

Indictment for stealing and receiving.

By sect. 92, "In any indictment containing a charge of feloniously stealing any property it shall be lawful to add a count or several counts for feloniously receiving the same or any part or parts thereof, knowing the same to have been stolen; and in any indictment for feloniously receiving any property knowing it to have been stolen it shall be lawful to add a count for feloniously stealing the same; and, where any such indictment shall have been preferred and found against any person, the prosecutor shall not be put to his election, but it shall be lawful for the jury who shall try the same to find a verdict of guilty, either of stealing the property, or of receiving the same, or any part or parts thereof, knowing the same to have been stolen; and, if such indictment shall have been preferred and found against two or more persons, it shall be lawful for the jury who shall try the same to find all or any of the said persons guilty either of stealing the property or of receiving the same, or any part or parts thereof, knowing the same to have been stolen, or to find one or more of the said persons guilty of stealing the property, and the other or others of them guilty of receiving the same or any part or parts thereof knowing the same to have been stolen."

Joinder of counts.

Counts may be joined, charging a person with being accessory before the fact and after, or as accessory before the fact and receiving, or as principal and receiver, or for receiving the goods and harbouring the thief; and the prisoner may be found guilty upon both counts. (See *Reg. v. Blackson*, 8 C. & P. 43; *Reg. v. Hughes, Bell*, C. C. 242; *R. v. Lee*, 6 C. & P. 536; and *Reg. v. Caspar*, *supra*.)

In *Reg. v. Ward* (2 F. & F. 19), it was held that a count for stealing certain articles may not be joined with a count for receiving those and other articles, knowing them to have been stolen; and this case would seem not to be affected by the alterations in the present section, which only permit a count for receiving part to be joined with a count for stealing the whole.

A count charging the receiving from the principal may be joined to a count charging the receiving from an evil-disposed person (*R. v. Austin*, 7 C. & P. 796); so, also, the latter count may be joined to one for killing with intent to steal. (*R. v. Wheeler*, 7 C. & P. 170.)

It seems that, where three acts of larceny are charged in separate counts, there may also be three separate counts for receiving. (See *Reg. v. Heywood*, L. & C. 451.)

Separate receivers may be included in the same indictment in the absence of the principal.

By sect. 93, "Whenever any property whatsoever shall have been stolen, taken, extorted, obtained, embezzled, or otherwise disposed of in such a manner as to amount to a felony, either at common law or by virtue of this Act, any number of receivers at different times of such property, or of any part or parts thereof, may be charged with substantive felonies in the same indictment, and may be tried together, notwithstanding that the principal felon shall not be included in the same indictment, or shall not be in custody or amenable to justice."

On an indictment for jointly receiving, persons may be convicted of separately receiving.

By sect. 94, "If, upon the trial of any two or more persons indicted for jointly receiving any property, it shall be proved that one or more of such persons separately received any part or parts of such property, it shall be lawful for the jury to convict upon such indictment such of the

said persons as shall be proved to have received any part or parts of such property."

Where several prisoners are jointly indicted for receiving stolen goods, and one who is acquitted is afterwards indicted separately for receiving the same goods, he may plead *autrefois acquit*. (*R. v. Dann*, 1 *Moo. C. C.* 424.)

This section extends to cases where, upon an indictment for a joint receipt, it is proved that the prisoners separately received the *whole* of the stolen property. (*Reg. v. Reardon & Bloor*, *L. R.*, 1 *C. C. R.* 31.)

By sect. 95, "Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, the stealing, taking, obtaining, converting, or disposing whereof is made a misdemeanour by this Act, knowing the same to have been unlawfully stolen, taken, obtained, converted, or disposed of, shall be guilty of a misdemeanour, and may be indicted and convicted thereof, whether the person guilty of the principal misdemeanour shall or shall not have been previously convicted thereof, or shall or shall not be amenable to justice; and every such receiver, being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping."

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

As to "property," see sect. 1, *ante*, 226.

The indictment should particularize the mode in which the goods were stolen, etc.; it is not enough to allege them to have been unlawfully obtained, taken, and carried away. (*Reg. v. Wilson*, 2 *Moo. C. C.* 52; *Reg. v. Rymes*, 3 *C. & K.* 326; *Russell on Crimes*, vol. ii, 4th edit. 554.)

By sect. 96, "Whosoever shall receive any chattel, money, valuable security, or other property whatsoever, knowing the same to have been feloniously or unlawfully stolen, taken, obtained, converted, or disposed of, may, whether charged as an accessory after the fact to the felony, or with a substantive felony, or with a misdemeanour only, be dealt with, indicted, tried, and punished in any county or place in which he shall have or shall have had any such property in his possession, or in any county or place in which the party guilty of the principal felony or misdemeanour may by law be tried, in the same manner as such receiver may be dealt with, indicted, tried, and punished in the county or place where he actually received such property."

See sect. 114, *post*, 295.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

As to "property," see sect. 1, *ante*, 226.

Where an indictment found in the county of A. alleged in one count that the principal stole a sheep in the county of A., and in another count that the prisoner received the sheep in the county of B. (being the same property as is mentioned in the other count), it was held that the indictment showed on the face of it that there was no jurisdiction. (*Reg. v. Martin*, 1 *Den. C. C.* 398; 2 *C. & K.* 950.)

Where the stealing is in A. and the receiving in B., they may both be laid to have been in A. (*Reg. v. Hinley*, 2 *M. & Rob.* 524; and see the 14 & 15 Vict. c. 100, s. 23.)

Where the prisoner sent a stolen note in a letter to a banker at W., requesting payment, the possession of the postmaster at W. was held to be the possession of the prisoner at W. (*Reg. v. Cryer*, *Dears. & B. C. C.* 324. See also *Reg. v. Rogers & others*, 37 *L. J., M. C.* 83; *post*, note to sect. 114.)

## (v) Receiving Stolen Goods.

A prisoner who has been acquitted of jointly receiving cannot be tried for separately receiving the same goods.

"Any part or parts."

Receiving, where the principal has been guilty of a misdemeanour.

The indictment should show how the goods were obtained.

Receiver, where triable.

Venue, etc.

"Possession."



(x) *Restitution and Recovery of Stolen Property.*

Receivers of property, where the original offence is punishable on summary conviction.

By sect. 97, "Where the stealing or taking of any property whatsoever is by this Act punishable on summary conviction, either for every offence or for the first or second offence only, or for the first offence only, any person who shall receive any such property, knowing the same to be unlawfully come by, shall, on conviction thereof before a justice of the peace, be liable, for every first, second, or subsequent offence of receiving, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence of stealing or taking such property is by this Act made liable."

See the 24 & 25 Vict. c. 110, *post*, tit. "*Metal*," for the summary conviction of dealers in old metal; and the 6 & 7 Vict. c. 40, for pawning woollen articles, etc.

## (w) ACCESSORIES.

Principals in the second degree, and accessories. Abettors in misdemeanours.

By sect. 98, "In case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except only a receiver of stolen property) shall on conviction be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement; and every person who shall aid, abet, counsel, or procure the commission of any misdemeanour punishable under this Act, shall be liable to be indicted and punished as a principal offender."

For the law upon this subject, see tit. "*Accessories*," Vol. I.

Abettors in offences punishable on summary conviction.

By sect. 99, "Whosoever shall aid, abet, counsel, or procure the commission of any offence which is by this Act punishable on summary conviction, either for every time of its commission, or for the first and second time only, or for the first time only, shall, on conviction before a justice of the peace, be liable for every first, second, or subsequent offence of aiding, abetting, counselling, or procuring, to the same forfeiture and punishment to which a person guilty of a first, second, or subsequent offence as a principal offender is by this Act made liable."

## (x) RESTITUTION AND RECOVERY OF STOLEN PROPERTY.

The owner of stolen property prosecuting thief or receiver to conviction shall have restitution of his property.

By sect. 100, "If any person guilty of any such felony or misdemeanour as is mentioned in this Act, in stealing, taking, obtaining, extorting, embezzling, converting, or disposing of, or in knowingly receiving, any chattel, money, valuable security, or other property whatsoever, shall be indicted for such offence by or on the behalf of the owner of the property, or his executor or administrator, and convicted thereof, in such case the property shall be restored to the owner or his representative; and in every case in this section aforesaid the Court before whom any person shall be tried for any such felony or misdemeanour shall have power to award from time to time writs of restitution for the said property, or to order the restitution thereof in a summary manner: provided that, if it shall appear before any award or order made that any valuable security shall have been *bonâ fide* paid or discharged by some person or body corporate liable to the payment thereof, or being a negotiable instrument shall have been *bonâ fide* taken or received by transfer or delivery, by some person or body corporate, for a just and valuable consideration, without any notice or without any reasonable cause to suspect that the same had by any felony or misdemeanour been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, in such case the Court shall not award or order the restitution of such security: provided also, that nothing in this section contained shall apply to the case of any prosecution of any trustee, banker, merchant, attorney, fac-

Provision as to valuable and negotiable securities.

Not to apply to prosecutions of trustees, bankers, etc.

tor, broker, or other agent intrusted with the possession of goods or documents of title to goods for any misdemeanour against this Act."

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

As to "property," see sec. 1, *ante*, 226.

As to the last proviso, see sects. 75-87, *ante*, 265-269.

(x) *Restitution and Recovery of Stolen Property.*

The last proviso is especially for the protection of persons receiving goods from factors, etc., under such circumstances that their title to them is valid. See the 6 Geo. 4, c. 94, and the 5 & 6 Vict. c. 39. But this proviso only applies to prosecutions for misdemeanours.

It is to be observed that the Court has power to order the restitution of property only where the prisoner is convicted.

By the *common law*, it should seem that, where a party's goods have been stolen, though, indeed, his ownership in the goods be not thereby absolutely divested, yet, until he has done all that he can to bring the felon to justice, his remedy to recover back the goods, either by a retaking, or action, or otherwise, is suspended. Otherwise, offences would be made up and healed, and parties would naturally seek their own immediate advantage, rather than the security of the public. (See 1 *Hale*, 546; *Noy*, 82; 4 *Bl. Com.* 363.)

By the common law.

It is clear, therefore, the owner could have no civil redress against the felon himself before conviction; for it would be merging the felony in the civil action. (See 4 *Bl. Com.* 863, 866; *Crosby v. Leng*, 12 *East*, 409.) And, if he has no redress against the felon himself, he has not against persons who derive their title through him.

And it was held that, if goods have been stolen, or there be reasonable ground for presuming that fact, the owner cannot maintain trover against the person who bought them of the supposed thief, without he has done everything in his power to bring the thief to justice. (*Gimson v. Woodfall*, 2 *C. & P.* 41.)

If the owner take his goods again of the offender, to the intent to favour him, or maintain him, this is unlawful, and punishable by fine and imprisonment; but, if he take them again without any such intent, it is no offence. (1 *Hale*, 546.)

Provided the best endeavours be used to bring the offender to justice, that, when done, will suffice to entitle the owner to his remedy to get back the goods; therefore, if, after the prosecution is commenced, and before trial, the offender dies, or breaks prison, or if he stands mute, or challenges more than the number he is allowed without assigning a reason, or the like, the right of the party injured will not be subverted. (1 *Hale*, 540.)

After the conviction or proper prosecution of the offender, the proprietor may take his goods wherever he can find them, so that it be effected without any breach of the peace, because he satisfied public justice, and is entitled to a writ of restitution whenever he thinks fit to demand it. (1 *Hale*, 546; 4 *Bl. Com.* 363.)

And, if the felon be pardoned after conviction, or even if he be *bonâ fide* acquitted, the owner may bring an action against him, in trespass or trover, to recover damages; for the civil right was not merged in the public injury, but only suspended till the prosecution was concluded. (*Crosby v. Leng*, 12 *East*, 409.)

If the thing stolen have been converted into money, the owner may, after having done all he can to bring the offender to justice, have the produce, instead of the specific chattel. (5 *Co.* 109; *Keilw.* 49. And see now the 30 & 31 Vict. c. 35, s. 9, *infra*.)

And it seems now clear, though formerly disputed, that, if the goods stolen have been openly sold, and *bonâ fide* purchased in market overt, the owner may have them restored, even from an innocent purchaser. (*Keilw.* 35, 48; 1 *Hale*, 542; 2 *Hawk.* c. 23, s. 54; *Com. Dig.* "Justices," (A), "Market" (A)). And, though this may seem hard upon

(x) *Restitution and Recovery of Stolen Property.*

the buyer who has given value for them, it should be remembered that either he or the original owner must suffer; and that the latter has done a meritorious act in bringing an offender to justice, whereas the merit of the former is only negative, in having been guilty of no unfair transaction. (4 *Bl. Com.* 363.) The maxim, therefore, "*spoliatus debet ante omnia restitui*," is founded on a principle of equity. But this rule cannot be extended, so as to affect any intermediate possessors of the property who have sold it *before* conviction; and the owner cannot maintain trover against them, even though he gave them notice that it was stolen, while it remained in their possession. (*Horwood v. Smith*, 2 *T. R.* 750; 2 *Leach*, 586; and see *Bishop v. Shillito*, 2 *B. & Ald.* 329, n.)

The prosecutor in an indictment can never recover any other things than those stated in the indictment; but, if more have been stolen, they will be forfeited to her Majesty. (5 *Co.* 110; *Keilw.* 49; 1 *Hale*, 545.)

By statute.

*By Statute.*]—The foregoing rules are applicable to the restitution of stolen goods, where the stealing amounts to an offence at common law.

If a prisoner is indicted upon several indictments for distinct offences of larceny, and found guilty upon two of them, it is usual for the Court to forego trying him on the others; but, where the property stolen is considerable, it is advisable to try him upon all indictments, in order that the Court may award restitution; for, unless, after judgment on the two indictments upon which he has been found guilty, the prisoner pleads guilty to the others, the Court cannot award restitution. (*Rob. J. P.* 312.)

In a case where the prisoner was convicted of stealing a bill of exchange and a considerable sum of money in specie, and the evidence tended to show that he must have purchased a horse with part of the proceeds of the bill, the Court ordered the horse to be delivered to the prosecutor. (*R. v. Powell*, 7 *C. & P.* 640.) But otherwise of a Bank of England note stolen, after it had been paid and cancelled by the Bank. (*R. v. Stanton*, 7 *C. & P.* 431.)

The Court will not in general award restitution where the owner has been guilty of gross neglect in bringing the offender to justice. (2 *Hawk.* c. 23, s. 56.)

The owner shall have no more goods than are mentioned in the indictment, though other goods were stolen at the same time; and the reason is because by such omission the offender might have escaped. (*Keilw.* 49; 1 *Hale*, 545.)

Where a man stole cattle, and sold them in open market, the prosecutor had restitution of the money, because it arose by the stealing. (*Noy*, 128.)

By the 31 Eliz. c. 12, stolen horses sold in open market can be claimed by the owner within six months, by paying the buyer for the cost.

The Court has no jurisdiction to direct the disposal of property found in the felon's possession, not forming part of that stolen. (*Reg. v. Pearce*, *Bell*, *C. C.* 235, *S. C.*; 27 *L. J., M. C.* 231.)

An order for restitution may be made, although a title to the goods has been acquired by the person on whom the order is made under the 5 & 6 Vict. c. 39; and disobedience of such an order will be punishable by attachment. (*Reg. v. Wolley*, 8 *Cox*, *C. C.* 337.) The making of the order is not discretionary but imperative. (*Ib.*)

Where a prisoner pleaded guilty to stealing several articles, the pawnbrokers into whose hands the goods had come objected to any order of restitution, saying that the pledging of the goods might not have amounted to felony, and that as against their title to the goods the prisoner's confession ought not to avail; but *Alderson*, B., and *Martin*, B., said they were satisfied from the depositions that the prisoner was not an agent, but was guilty of felony; and an order for restitution was granted. (*Reg. v. Macklin*, 5 *Cox*, *C. C.* 216.)

It is now provided by the 30 & 31 Vict. c. 35, s. 9, that, "Where any prisoner shall be convicted, either summarily or otherwise, of larceny or other offence which includes the stealing of any property, and it shall appear to the Court by the evidence that the prisoner has sold the stolen property to any person, and that such person has had no knowledge that the same was stolen, and that any monies have been taken from the prisoner on his apprehension, it shall be lawful for the Court, on the application of such purchaser, and on the restitution of the stolen property to the prosecutor, to order that out of such monies a sum not exceeding the amount of the proceeds of the said sale be delivered to the said purchaser."

(y) *Apprehension of Offenders, etc.*

By the 24 & 25 Vict. c. 96, s. 101, "Whosoever shall corruptly take any money or reward, directly or indirectly, under pretence or upon account of helping any person to any chattel, money, valuable security, or other property whatsoever which shall by any felony or misdemeanour have been stolen, taken, obtained, extorted, embezzled, converted, or disposed of, as in this Act before mentioned, shall (unless he shall have used all due diligence to cause the offender to be brought to trial for the same) be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of eighteen years, with or without whipping."

Taking a reward for helping to the recovery of stolen property without bringing the offender to trial.

As to "valuable security," see sects. 1, 27, *ante*, 226, 236.

As to "property," see sect. 1, *ante*, 226.

On an indictment on the 7 & 8 Geo. 4, c. 29, s. 58, for corruptly receiving money under pretence of helping the prosecutor to a watch which had been stolen from him, *Tindall, C.J.*, left to the jury, first, whether the watch was stolen; and, secondly, whether the prisoner took the prosecutor's money under a corrupt pretence, and not intending to detect the thief if possible. In this case there was no evidence to show that the prisoner was in any way connected with the thief; and such evidence was not thought essential to a conviction. (*Reg. v. King*, 1 *Cox, C. C.* 36.)

One who assists the prosecutor at his request in recovering the stolen property, not meaning to bring the guilty parties to justice, although he knows them, nor yet meaning to screen them or share the money with them, is within the statute. (*Reg. v. Pascoe*, 1 *Den. C. C.* 456.) So the defendant may be convicted, though he did not know the thief, nor pretend that he did, and though he had no power to apprehend the thief, and though the goods were never restored, and the defendant had no power to restore them. (*R. v. Ledbitter*, 1 *Moo. C. C.* 76.)

#### (y) APPREHENSION OF OFFENDERS, AND OTHER PROCEEDINGS.

By sect. 103, "Any person found committing any offence punishable, either upon indictment or upon summary conviction, by virtue of this Act, except only the offence of angling in the daytime, may be immediately apprehended without a warrant by any person, and forthwith taken, together with such property, if any, before some neighbouring justice of the peace, to be dealt with according to law; and, if any credible witness shall prove upon oath before a justice of the peace a reasonable cause to suspect that any person has in his possession or on his premises any property whatsoever on or with respect to which any offence, punishable either upon indictment or upon summary conviction by virtue of this Act, shall have been committed, the justice may grant a warrant to search for such property, as in the case of stolen goods; and any person to whom any property shall be offered to be sold, pawned, or delivered,

A person in the act of committing any offence may be apprehended without a warrant.

A justice, upon good grounds of suspicion proved on oath, may grant a search warrant.

Any person to whom stolen property is offered

(z) *Summary Proceedings, etc.*

may seize the party offering it.

A person loitering at night and suspected of any felony may be apprehended.

The person arrested must be taken before a justice immediately.

Arrest by a private person must be reasonable.

Mode of compelling the appearance of persons punishable on summary conviction.

if he shall have reasonable cause to suspect that any such offence has been committed on or with respect to such property, is hereby authorized, and, if in his power, is required, to apprehend and forthwith to take before a justice of the peace the party offering the same, together with such property, to be dealt with according to law."

See also the next section.

By sect. 104, "Any constable or peace officer may take into custody, without warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed, or being about to commit, any felony against this Act, and shall take such person, as soon as reasonably may be, before a justice of the peace, to be dealt with according to law."

By the 14 & 15 Vict. c. 19, s. 11, it is provided that any person whatsoever may apprehend any person who shall be found committing any indictable offence in the night, and convey him or deliver him to some constable or other peace officer, in order to his being conveyed as soon as conveniently may be before a justice of the peace, to be dealt with according to law.

And by sect. 12, any one assaulting a person entitled to apprehend him will be guilty of a misdemeanour.

The person arrested must be taken immediately before a justice, and by the direct road, or the person arresting him will be liable to an action of trespass. (*Morris v. Wise*, 2 F. & F. 51; and see *Fox v. Gaunt*, 3 B. & Ad. 798; *Deercourt v. Corbishley*, 24 L. J., Q. B. 313.)

A private person must not only have reasonable grounds for arresting a suspected person, but must prove that a felony has been committed. (*Beckwith v. Philby*, 6 B. & C. 635.)

Under sect. 104, a constable may seize a person whom he suspects of having (at some previous period) committed a felony.

## (z) SUMMARY PROCEEDINGS, VENUE, COSTS, ETC.

By sect. 105, "Where any person shall be charged on the oath of a credible witness before any justice of the peace with any offence punishable on summary conviction under this Act, the justice may summon the person charged to appear at a time and place to be named in such summons; and, if he shall not appear accordingly, then (upon proof of the due service of the summons upon such person, by delivering the same to him personally, or by leaving the same at his usual place of abode), the justice may either proceed to hear and determine the case *ex parte*, or issue his warrant for apprehending such person, and bringing him before himself or some other justice of the peace; or the justice before whom the charge shall be made may (if he shall so think fit), without any previous summons (unless where otherwise specially directed), issue such warrant; and the justice before whom the person charged shall appear or be brought shall proceed to hear and determine the case."

And see the 11 & 12 Vict. c. 43.

In cases of persons under the age of sixteen, see the 10 & 11 Vict. c. 82, and the 13 & 14 Vict. c. 37, *ante*, 177.

The 24 & 25 Vict. c. 96, contains no provision as to the time within which prosecutions for offences punishable on summary conviction under that Act must be commenced; and, therefore, the 11 & 12 Vict. c. 43, s. 11, which requires the information to be laid within six months, will apply.

The procedure in summary convictions in London and the metropolitan police district is regulated by the 2 & 3 Vict. c. 47.

Application of

By sect. 106, "Every sum of money which shall be forfeited on any

summary conviction for the value of any property stolen or taken, or for the amount of any injury done (such value or amount to be assessed in each case by the convicting justice), shall be paid to the party aggrieved, except where he is unknown, and in that case such sum shall be applied in the same manner as a penalty; and every sum which shall be imposed as a penalty by any justice of the peace, whether in addition to such value or amount or otherwise, shall be paid and applied in the same manner as other penalties recoverable before justices of the peace are to be paid and applied in cases where the statute imposing the same contains no direction for the payment thereof to any person: Provided that, where several persons shall join in the commission of the same offence, and shall, upon conviction thereof, each be adjudged to forfeit a sum equivalent to the value of the property or to the amount of the injury, in every such case no further sum shall be paid to the party aggrieved than such value or amount; and the remaining sum or sums forfeited shall be applied in the same manner as any penalty imposed by a justice of the peace is hereinbefore directed to be applied."

Where the aggrieved party is unknown, the forfeited money under this section must be paid by the offender to the magistrate's clerk, who will pay it to the treasurer of the county in aid of the county rate. (11 & 12 Vict. c. 43, s. 31; *Stone's Petty Sessions*, 7th edit. by Bell & Cave, p. 166.)

By sect. 107, "In every case of a summary conviction under this Act, where the sum which shall be forfeited for the value of the property stolen or taken, or for the amount of the injury done, or which shall be imposed as a penalty by the justice, shall not be paid, either immediately after the conviction, or within such period as the justice shall at the time of the conviction appoint, the convicting justice (unless where otherwise specially directed) may commit the offender to the common gaol or house of correction, there to be imprisoned only, or to be imprisoned and kept to hard labour, according to the discretion of the justice, for any term not exceeding two months, where the amount of the sum forfeited, or of the penalty imposed, or of both (as the case may be), together with the costs, shall not exceed five pounds, and for any term not exceeding four months where the amount, with costs, shall not exceed ten pounds, and for any term not exceeding six months in any other case, the commitment to be determinable in each of the cases aforesaid upon payment of the amount and costs."

By sect. 108, "Where any person shall be summarily convicted before a justice of the peace of any offence against this Act, and it shall be a first conviction, the justice may, if he shall so think fit, discharge the offender from his conviction, upon his making such satisfaction to the party aggrieved for damages and costs, or either of them, as shall be ascertained by the justice."

By sect. 109, "In case any person convicted of any offence punishable upon summary conviction by virtue of this Act shall have paid the sum adjudged to be paid, together with costs, under such conviction, or shall have received a remission thereof from the Crown, or from the lord lieutenant or other chief governor in *Ireland*, or shall have suffered the imprisonment awarded for nonpayment thereof, or the imprisonment adjudged in the first instance, or shall have been so discharged from his conviction by any justice as aforesaid, in every such case he shall be released from all further or other proceedings for the same cause."

For forms of conviction, summonses, warrants, etc., see tit. "*Conviction*," Vol. I., and tits. "*Summons*" and "*Warrant*," Vol. V.; and see also the forms, *post*, p. 305, *et seq.*

By sect. 110, "In all cases where the sum adjudged to be paid on any summary conviction shall exceed five pounds, or the imprisonment adjudged shall exceed one month, or the conviction shall take place before one justice only, any person who shall think himself aggrieved by any

(2) *Summary Proceedings, etc.*

forfeitures and penalties on summary convictions.

Proviso where several persons join in commission of the same offence.

If a person summarily convicted shall not pay, etc., the justice may commit him.

Scale of imprisonment.

Justice may discharge the offender in certain cases.

A summary conviction shall be a bar to any other proceeding for the same cause.

Appeal.

(z) *Summary  
Proceedings,  
etc.*

such conviction may appeal to the next Court of general or quarter sessions which shall be holden not less than twelve days after the day of such conviction for the county or place wherein the cause of complaint shall have arisen: Provided, that such person shall give to the complainant a notice in writing of such appeal, and of the cause and matter thereof, within three days after such conviction, and seven clear days at the least before such sessions, and shall also either remain in custody until the sessions, or shall enter into a recognizance, with two sufficient sureties, before a justice of the peace, conditioned personally to appear at the said sessions, and to try such appeal, and to abide the judgment of the Court thereupon, and to pay such costs as shall be by the Court awarded; or, if such appeal shall be against any conviction whereby only a penalty or other sum of money shall be adjudged to be paid, shall deposit with the clerk of the convicting justice such a sum of money as such justice shall deem to be sufficient to cover the sum so adjudged to be paid, together with the costs of the conviction and the costs of the appeal; and, upon such notice being given, and such recognizance being entered into, or such deposit being made, the justice before whom such recognizance shall be entered into, or such deposit shall be made, shall liberate such person if in custody; and the Court at such sessions shall hear and determine the matter of the appeal, and shall make such order therein, with or without costs to either party, as to the Court shall seem meet, and in case of the dismissal of the appeal or the affirmance of the conviction shall order and adjudge the offender to be punished according to the conviction, and to pay such costs as shall be awarded, and shall, if necessary, issue process for enforcing such judgment; and in any case where after any such deposit shall have been made as aforesaid the conviction shall be affirmed, the Court may order the sum thereby adjudged to be paid, together with the costs of the conviction and the costs of the appeal, to be paid out of the money deposited, and the residue thereof, if any, to be repaid to the party convicted; and in any case where after any such deposit the conviction shall be quashed, the Court shall order the money deposited to be repaid to the party convicted; and in every case where any conviction shall be quashed on appeal as aforesaid, the clerk of the peace, or other proper officer, shall forthwith indorse on the conviction a memorandum that the same has been so quashed; and whenever any copy or certificate of such conviction shall be made, a copy of such memorandum shall be added thereto, and shall be sufficient evidence that the conviction has been quashed in every case where such copy or certificate would be sufficient evidence of such conviction."

No *certiorari*, etc.

By sect. 111, "No such conviction or adjudication made on appeal therefrom, shall be quashed for want of form, or be removed by *certiorari* into any of her Majesty's superior Courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same."

The words "or otherwise" followed "*certiorari*" in the corresponding section of the 9 Geo. 4, c. 31; but they are here omitted that they may not prevent a case being brought before any of the superior Courts of law under the 20 & 21 Vict. c. 43. (*Greaves' Criminal Acts*, p. 64.) In the Act relating to Ireland these words are not omitted—14 & 15 Vict. c. 92, s. 24.

Convictions to be  
returned to the  
quarter sessions.

By sect. 112, "Every justice of the peace before whom any person shall be convicted of any offence against this Act shall transmit the conviction to the next Court of general or quarter sessions which shall be holden for the county or place wherein the offence shall have been committed, there to be kept by the proper officer among the records of the Court; and upon any information against any person for a subsequent offence, a copy of such conviction, certified by the proper officer of the

Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction for the former offence, and the conviction shall be presumed to have been unappealed against until the contrary be shown."

(z) *Summary Proceedings, etc.*

By sect. 1 of the 18 & 19 Vict. c. 126, it is enacted that "where any person is charged before any justices of the peace assembled at such petty sessions as hereinafter provided with having committed simple larceny, and the value of the whole of the property alleged to have been stolen does not, in the judgment of such justices, exceed five shillings, or with having attempted to commit larceny from the person, or simple larceny, it shall be lawful for such justices to hear and determine the charge in a summary way; and if the person charged shall confess the same, or if such justices, after hearing the whole case for the prosecution and for the defence, shall find the charge to be proved, then it shall be lawful for such justices to convict the person charged, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any period not exceeding three calendar months; and if they find the offence not proved, they shall dismiss the charge, and make out and deliver to the person charged a certificate under their hands, stating the fact of such dismissal; and every such conviction and certificate respectively may be in the forms (A.) and (B.) (*post*, 318) in the Schedule to this Act, or to the like effect: Provided always, that if the person charged do not consent to have the case heard and determined by such justices, or if it appear to such justices that the offence is one which, owing to a previous conviction of the person charged, is punishable by law with transportation or penal servitude, or if such justices be of opinion that the charge is, from any other circumstances, fit to be made the subject of prosecution by indictment, rather than to be disposed of summarily, such justices shall, instead of summarily adjudicating thereon, deal with the case in all respects as if this Act had not been passed: Provided also, that if upon the hearing of the charge such justices shall be of opinion that there are circumstances in the case which render it inexpedient to inflict any punishment, they shall have power to dismiss the person charged, without proceeding to a conviction."

Power to justices at petty sessions to punish persons charged with larceny, etc., summarily.

If parties accused do not consent, justices to deal with cases as if this Act had not passed.

By sect. 2, "Where the justices before whom any person is charged as aforesaid propose to dispose of the case summarily under the foregoing provisions, one of such justices, after the examinations of all the witnesses for the prosecution have been completed, and before calling upon the person charged for any statement which he may wish to make, shall state to such person the substance of the charge against him, and shall then say to him these words, or words to the like effect:—'Do you consent that the charge against you shall be tried by us, or do you desire that it shall be sent for trial by a jury at the sessions or assizes' (as the case may be); and if the person charged shall consent to the charge being summarily tried and determined as aforesaid, then the justices shall reduce the charge into writing, and read the same to such person, and shall then ask him whether he is guilty or not of such charge; and if such person shall say that he is guilty, the justices shall then proceed to pass such sentence upon him as may by law be passed, subject to the provisions of this Act in respect to such offence; but if the person charged shall say that he is not guilty, the justices shall then inquire of such person whether he has any defence to make to such charge, and if he shall state that he has a defence the justices shall hear such defence, and then proceed to dispose of the case summarily."

Justices to ask the accused whether he consents to the charge being summarily determined.

By sect. 3, "Where any person is charged before any justices at such petty sessions as aforesaid with simple larceny (the property alleged to have been stolen exceeding in value five shillings), or stealing from the person, or larceny as a clerk or servant, and the evidence, when the case on the part of the prosecution has been completed, is in the opinion

Persons charged with larceny, etc., may plead guilty before justices in petty sessions, and be sentenced forthwith.



(z) *Summary Proceedings, etc.*

Justices to warn the accused that he is not obliged to plead.

Persons accused may have assistance of counsel, etc.

Power to remand persons charged to next petty sessions.

Forfeited recognizances to be transmitted to the clerk of the peace.

Convictions and other proceedings to be returned to the quarter sessions.

Justices may order restitution of property.

of such justices sufficient to put the person charged on his trial for the offence with which he is charged, such justices, if the case appear to them to be one which may properly be disposed of in a summary way, and may be adequately punished by virtue of the powers of this Act, shall reduce the charge into writing, and shall read it to the said person, and shall then ask him whether he is guilty or not of the charge; and if such person shall say that he is guilty such justices shall thereupon cause a plea of guilty to be entered upon the proceedings, and shall convict him of such offence, and commit him to the common gaol or house of correction, there to be imprisoned, with or without hard labour, for any term not exceeding six calendar months; and every such conviction may be in the form (C) (*post*, 318) in the schedule to this Act, or to the like effect: Provided always, that the said justices, before they ask such person whether he is guilty or not, shall explain to him that he is not obliged to plead or answer before them at all, and that if he do not plead or answer before them he will be committed for trial in the usual course."

By sect. 4, "In every case of summary proceeding under this Act the person accused shall be allowed to make his full answer and defence, and to have all witnesses examined and cross-examined by counsel or attorney."

By sect. 5, "Where any person is charged before any justice or justices with any offence mentioned in this Act, and in the opinion of such justice or justices the case may be proper to be disposed of by justices in petty sessions under this Act, the justice or justices before whom such person is so charged may, if he or they see fit, remand such person for further examination to the next petty sessions, in like manner in all respects as a justice or justices are authorized to remand a party accused under the Act passed in the Session holden in the eleventh and twelfth years of her Majesty, chapter forty-two, section twenty-one, or under the Petty Sessions Act (*Ireland*), 1851, section fourteen."

By sect. 6, "If any person suffered to go at large upon entering into such recognizance as the justice or justices are authorized under the last-mentioned Act to take on the remand of a party accused do not afterwards appear pursuant to such recognizance, then the justices before whom he ought to have appeared shall certify (under the hands of two of them) on the back of the recognizance, to the clerk of the peace of the county or place, the fact of such nonappearance, and such recognizance shall be proceeded upon in like manner as other recognizances, and such certificate shall be deemed sufficient *prima facie* evidence of such nonappearance."

By sect. 7, "The justices adjudicating under this Act shall transmit the conviction, or a duplicate of a certificate of dismissal, with the written charge, the depositions of the witnesses for the prosecution and for the defence, and the statement of the accused, to the next Court of general or quarter sessions for the county or place, there to be kept by the proper officer among the records of the Court; and a copy of such conviction, or of such certificate of dismissal, certified by the proper officer of the Court, or proved to be a true copy, shall be sufficient evidence to prove a conviction or dismissal for the offence mentioned therein in any legal proceeding whatever."

By sect. 8, "It shall be lawful for the justices by whom any person is convicted under this Act to order restitution of the property stolen, taken, or obtained by false pretences, in those cases in which the Court before whom the person convicted would have been tried but for this Act may be by law authorized to order restitution."

And see now the 30 & 31 Vict. c. 35, s. 9, *ante*, p. 287.

By sect. 9, "Every petty sessions for the purposes of this Act shall be an open public Court, and shall be the petty sessions holden for a petty sessional division; and a written or printed Notice of the days and hours for holding such petty sessions shall be posted or affixed by the clerk to the justices of petty sessions upon the outside of some conspicuous part of the building or place where the same are held."

(z) *Summary Proceedings, etc.*

Petty sessions to be an open Court, and held for petty sessional division.

By sect. 10, "The provisions of the Act of the session holden in the eleventh and twelfth years of her Majesty, chapter forty-three, shall not be construed as applying to any proceeding under this Act."

11 & 12 Vict. c. 43, not to apply to proceedings under this Act.

By sect. 11, "Every conviction by justices in petty sessions under this Act shall have the same effect as a conviction upon indictment for the same offence would have had, save that no conviction under this Act shall be attended with any forfeiture."

Effect of conviction.

By sect. 12, "Every person who obtains a certificate of dismissal or is convicted under this Act shall be released from all further or other criminal proceedings for the same cause."

Proceedings under this Act a bar to further proceedings.

By sect. 13, "No conviction, sentence, or proceeding under this Act shall be quashed for want of Form; and no warrant of commitment upon a conviction shall be held void by reason of any defect therein, if it be therein alleged that the offender has been convicted, and there be a good and valid conviction to sustain the same."

No conviction to be quashed for want of form.

By sect. 14, "Where any charge is summarily adjudicated upon under this Act, or an offender is under this Act convicted by justices in petty sessions upon a plea of "guilty," it shall be lawful for the justices by whom such charge has been adjudicated upon or offender convicted, upon the request of any person who has preferred the charge or appeared to prosecute or give evidence against the person charged, if such justices think fit so to do, to grant a certificate to such person of the amount of the compensation which such justices may deem reasonable for his expenses, trouble, and loss of time therein, subject nevertheless to the regulations made or to be made as hereinafter mentioned; and every such certificate shall, when granted in *England*, have the effect of an order of Court for the payment of the expenses of a prosecution made under the Act of the seventh year of King *George* the Fourth, chapter sixty-four, and the Acts amending the same; and when granted in *Ireland* shall have the effect of an order of Court for the payment of the expenses of a prosecution made under the Act of the fifty-fifth year of King *George* the Third, chapter ninety-one, and the Acts amending the same; and the amount mentioned in such certificate shall be paid in like manner as the money mentioned in such order of Court; and all certificates to be granted under this Act shall be subject to the like regulations made or to be made in relation thereto as the certificates mentioned in the said Act of the seventh year of King *George* the Fourth to be granted by examining magistrates are or may be subject to under the Act of the session holden in the fourteenth and fifteenth years of her Majesty, chapter fifty-five: Provided also, that the amount of the fees payable to the clerks of the magistrates in petty sessions in respect of any proceeding under this Act, and of the fees payable to the clerks of the peace for filing the depositions, conviction, or certificate of dismissal aforesaid, and of all such expenses of apprehending the person charged, and detaining him in custody, and of such other expenses as are now by law payable when incurred before a commitment for trial, may be added to the certificate for compensation aforesaid, and paid in the like manner."

Justices may order payment of expenses.

By sect. 15, the town-hall, court-house, etc., may be used for petty sessions under the Act; and by sect. 16 any metropolitan or stipendiary magistrate may act alone.

By sect. 17, "Nothing in this Act shall affect the provisions of the

(z) *Summary Proceedings, etc.*

Nothing to affect provisions of 10 & 11 Vict. c. 82, and 13 & 14 Vict. c. 37.

Act of the session holden in the tenth and eleventh years of her Majesty, chapter eighty-two, 'For the speedy Trial and Punishment of Juvenile Offenders,' or of the Act of the session holden in the thirteenth and fourteenth years of her Majesty, chapter thirty-seven, "For the further extension of Summary Jurisdiction in Cases of Larceny," or of the Summary Jurisdiction [Ireland] Act, 1851; and this Act shall not extend to persons punishable under the said Acts so far as regards offences for which such persons may be punished thereunder." (See tit. "*Juvenile Offenders*," ante, 177.)

Sect. 18 provides for the compensation to clerks of the peace and other officers, in lieu of fees and emoluments; sect. 19 for the increase of the salary of the chief magistrate; and sect. 20 for the salary of clerks of assize. Sect. 21 repeals so much of the 12 Ric. 2, c. 10, and 14 Ric. 2, c. 12, as directs the payment of wages to justices and their clerks. Sect. 22 provides for the compensation of aggrieved persons, being witnesses, in cases of injury to property.

Interpretation of terms.

By sect. 23, "In the interpretation of this Act 'county' shall be construed to include riding, parts, liberty, and division of a county; 'borough' to include city, county of a city or town, and town corporate; 'property' to include everything included under the words 'chattel, money, or valuable security,' as used in the Act of the session holden in the seventh and eighth years of King George the Fourth, chapter twenty-nine; and in the case of any 'valuable security' the value of the share, interest, or deposit to which the security may relate, or of the money due thereon or secured thereby, and remaining unsatisfied, or of the goods or other valuable thing mentioned in the warrant or order, shall be deemed to be the value of such security."

Extent of Act.

By sect. 24, this Act does not extend to Scotland.

Venue, in proceedings against persons acting under this Act.

By the 24 & 25 Vict. c. 96, s. 113, "All actions and prosecutions to be commenced against any person for anything done in pursuance of this Act shall be laid and tried in the county where the fact was committed, and shall be commenced within six months after the fact committed, and not otherwise; and notice in writing of such action and of the cause thereof shall be given to the defendant one month at least before the commencement of the action; and in any such action the defendant may plead the general issue, and give this Act and the special matter in evidence, at any trial to be had thereupon; and no plaintiff shall recover in any such action if tender of sufficient amends shall have been made before such action brought, or if a sufficient sum of money shall have been paid into Court after such action brought, by or on behalf of the defendant; and if a verdict shall pass for the defendant, or the plaintiff shall become nonsuit, or discontinue any such action after issue joined, or if, upon demurrer or otherwise, judgment shall be given against the plaintiff, the defendant shall recover his full costs as between attorney and client, and have the like remedy for the same as any defendant has by law in other cases; and though a verdict shall be given for the plaintiff in any such action, such plaintiff shall not have costs against the defendant unless the judge before whom the trial shall be shall certify his approbation of the action."

Notice of action.

General issue, etc.

In an action for imprisoning the plaintiff upon a charge of felony in pulling down part of a house, and selling the materials:—Held that the defendant was within the protection of sect. 75 of the 7 & 8 Geo. 4, c. 29 (which section is almost the same as the present), if he *bonâ fide* thought he was acting in pursuance of the Act. (*Rudd v. Scott*, 2 Scott, N. R. 631; *Beechey v. Sides*, 9 B. & C. 806; *Hughes v. Buckland*, 15 M. & W. 346; *Reed v. Cowmeadow*, 6 Ad. & Ell. 661; *Cann v. Clipper-ton*, 10 Ad. & Ell. 582.)

By a recent decision in the Exchequer Chamber it has been held on a bill of exceptions, the defendant objecting that he had not received notice

of action according to sect. 113 of the present Act, that the true rule is whether the defendant honestly believed in the existence of such a state of facts as would, if it had existed, have afforded a justification for the arrest under the statute. (*Roberts v. Orchard*, 33 *L. J.*, *Ex.* 65; 2 *H. & C.* 769.)

It has been held at Nisi Prius that a private person, who gave another into custody on a charge of having committed an offence against that statute, was not entitled to notice of action under the 75th section of the Act of Geo. 4, as that section only applied to constables and other officers, and persons of that kind. (*Brooker v. Field*, 9 *Car. & P.* 651; *sed quære.*)

In an action by a tenant against his landlord for a malicious charge of felony under the 7 & 8 Geo. 4, c. 29, s. 45, for stealing fixtures let to him, it was held not to be necessary to give a notice of action under the 75th section of that Act. (*Dowell v. Beningfield*, 1 *Car. & M.* 9.)

#### AS TO OTHER MATTERS.

By sect. 114, "If any person shall have in his possession in any one part of the United Kingdom any chattel, money, valuable security, or other property whatsoever, which he shall have stolen or otherwise feloniously taken in any other part of the United Kingdom, he may be dealt with, indicted, tried, and punished for larceny or theft in that part of the United Kingdom where he shall so have such property, in the same manner as if he had actually stolen or taken it in that part; and if any person in any one part of the United Kingdom shall receive or have any chattel, money, valuable security, or other property whatsoever which shall have been stolen or otherwise feloniously taken in any other part of the United Kingdom, such person knowing such property to have been stolen or otherwise feloniously taken, he may be dealt with, indicted, tried, and punished for such offence in that part of the United Kingdom where he shall so receive or have such property, in the same manner as if it had been originally stolen or taken in that part."

Stealers of property in one part of the United Kingdom who have the same in any other part of the United Kingdom may be tried and punished in that part of the United Kingdom where they have the property.

Larceny at common law is considered to be committed in every county or jurisdiction into which the thief carries the stolen goods.

At common law.

Larceny committed out of the kingdom, as in Jersey or France, will not be within the section, and therefore cannot be tried in England although the thief has the goods here. (*R. v. Prowes*, 1 *Moo. C. C.* 349; *Reg. v. Madge*, 9 *C. & P.* 29, *Parke*, B.) So it was held of Scotland and Ireland; but the present section embraces both Scotland and Ireland.

Out of the kingdom.

By the 7 Geo. 4, c. 64, s. 12, offences committed on the boundaries of counties may be tried in either county.

On boundaries of counties.

By the 7 Geo. 4, c. 64, s. 13, offences committed during a journey or voyage may be tried in any county through which the carriage or vessel passed; and, where the course of the road or river, etc., is a boundary, then in either county.

During a journey.

The larceny must be committed "in or upon the coach." (*Sharpe's case*, 2 *Lew.* 233.)

The object of the statute is to enable any prosecutor whose property is stolen from any sort of carriage to prosecute in any county through any part of which the carriage has passed. (*Reg. v. Sharpe*, *Dears. C. C.* 415; and see *Reg. v. French*, 8 *Cox C. C.* 252.) Railway trains are within the Act. (*Reg. v. French*, *supra.*)

Detached parts of counties.

By the 2 & 3 Vict. c. 82, s. 1, justices may commit prisoners from detached parts of counties, surrounded in whole or in part by the county for which they act, and such prisoners may be tried by them, etc., as if the detached parts were parts of the county for which they act.

*Other  
Matters.*

By the 3 & 4 Vict. c. 88, s. 2, outlying districts may be transferred from one county to another; and by the 7 & 8 Vict. c. 61, s. 1, detached parts of counties are to be considered as belonging to the county by which they are surrounded.

Counties of cities  
and towns.

As to the committing of prisoners in counties of cities and towns where there are no assizes, see the 14 & 15 Vict. c. 55, s. 19.

## Possession.

Where a chattel stolen in one county was sent by the thief in a parcel by railway into another county to the receiver, it was held that the thief retained the control over the stolen chattel, and was in possession of it in such other county. The Court did not distinctly say whether the possession by the railway company or by the receiver was the possession of the thief. (*Reg. v. Rogers and others*, 37 L. J., M. C. 83; and see *Reg. v. Cryer*, ante, 283.)

Offences com-  
mitted within the  
jurisdiction of  
the Admiralty.

By sect. 115, "All indictable offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature, and liable to the same punishments, as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in which the offender shall be apprehended or be in custody; and in any indictment for any such offence or for being an accessory to any such offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence itself shall be averred to have been committed "on the high seas:" provided that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces."

The common law took no cognizance of goods stolen at sea; and therefore the thief could not be indicted for the larceny in any county into which he might have carried them. (3 *Inst.* 113; 1 *Hawk. P. C.* c. 33, s. 52.)

Where the prisoner stole goods on board a British ship upon the high seas, and was afterwards apprehended and tried at Southampton, it was held that he was rightly tried there under the above section. (*Reg. v. Peel*, L. & C. 231; 32 L. J., M. C. 65.)

Form of indict-  
ment for a sub-  
sequent offence.

By sect. 116, "In any indictment for any offence punishable under this Act, and committed after a previous conviction or convictions for any felony, misdemeanour, or offence or offences punishable upon summary conviction, it shall be sufficient, after charging the subsequent offence, to state that the offender was at a certain time and place, or at certain times and places, convicted of felony, or of an indictable misdemeanour, or of an offence or offences punishable upon summary conviction (as the case may be), without otherwise describing the previous felony, misdemeanour, offence or offences; and a certificate containing the substance and effect only (omitting the formal part) of the indictment and conviction for the previous felony or misdemeanour, or a copy of any such summary conviction, purporting to be signed by the clerk of the Court or other officer having the custody of the records of the Court where the offender was first convicted, or to which such summary conviction shall have been returned, or by the deputy of such clerk or officer (for which certificate or copy a fee of five shillings and no more shall be demanded or taken), shall, upon proof of the identity of the person of the offender, be sufficient evidence of such conviction, without proof of the signature or official character of the person appearing to have signed the same; and the proceedings upon any indictment for committing any offence after a previous conviction or convictions shall be as follows (that is to say):—The offender shall, in the first instance, be arraigned upon so much only of the indictment as charges the subsequent offence, and if he plead not guilty, or if the Court order a plea of not guilty to

When the pre-  
vious conviction  
is to be proved  
on the trial.

be entered on his behalf, the jury shall be charged, in the first instance, to inquire concerning such subsequent offence only; and if they find him guilty, or if on arraignment he plead guilty, he shall then, and not before, be asked whether he had been previously convicted as alleged in the indictment, and if he answer that he had been so previously convicted the Court may proceed to sentence him accordingly, but if he deny that he had been so previously convicted, or stand mute of malice, or will not answer directly to such question, the jury shall then be charged to inquire concerning such previous conviction or convictions, and in such case it shall not be necessary to swear the jury again, but the oath already taken by them shall for all purposes be deemed to extend to such last-mentioned inquiry: Provided, that if upon the trial of any person for any such subsequent offence such person shall give evidence of his good character, it shall be lawful for the prosecutor, in answer thereto, to give evidence of the conviction of such person for the previous offence or offences before such verdict of guilty shall be returned, and the jury shall inquire concerning such previous conviction or convictions at the same time that they inquire concerning such subsequent offence."

The previous conviction should be stated at the end and not at the beginning of the indictment. See *Reg. v. Hilton (Bell, C. C. 20)* as to the practice under the old law; and see as to the probable meaning of the present section, *Russell on Crimes, 4th edit., vol. ii.*

Form of the  
indictment.

The indictment need not state the judgment. (*Reg. v. Spencer, 1 Car. & Kir. 159.*) But the certificate must state that judgment was given for the previous felony, and not merely that the prisoner was convicted. (*Reg. v. Ackroyd, 1 Car. & K. 159.*) Any number of previous convictions may be laid and proved. (*Reg. v. Clark, Dears. C. C. 198.*)

Any number of  
previous convictions  
may be laid.

It is not necessary to call a witness who was present at the trial; it is sufficient to show that the prisoner and the person who underwent the sentence mentioned in the certificate are the same. (*Reg. v. Croft, 9 Car. & P. 219; Reg. v. Long, 1 F. & F. 77.*)

Proof of identity.

Formerly the prisoner was arraigned upon the whole indictment, but only given in charge to the jury upon the subsequent offence; and, if they found him guilty of that, they were then charged to inquire concerning the previous conviction. (*Reg. v. Keys, 2 Den. C. C. 347; Reg. v. Shuttleworth, Ib. 351.*) Of course, the effect intended to be avoided by only giving the prisoner in charge to the jury upon the subsequent offence was frequently produced by arraigning him upon the whole indictment. The present section avoids this mischief, and renders the practice reasonable and consistent.

Arraignment and  
mode of trial.

The conviction may be proved either by calling witnesses for the purpose, or by cross-examination of the witnesses to character. And such evidence may be given, although witnesses to character are not called by the defendant, but the evidence to character is elicited on cross-examination of the witnesses for the prosecution. (*Reg. v. Gadbury, 8 Car. & P. 676; Reg. v. Shrimpton, 2 Den. C. C. 319; see also Reg. v. Rowton, L. & C. 520.*)

Evidence of the  
conviction.

By sect. 117, "Whenever any person shall be convicted of any indictable misdemeanour punishable under this Act, the Court may, if it shall think fit, in addition to or in lieu of any of the punishments by this Act authorized, fine the offender, and require him to enter into his own recognizances and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this Act, the Court may, if it shall think fit, require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to any punishment by this Act authorized: Provided that no person shall be imprisoned under this clause for not finding sureties for any period exceeding one year."

Fines and sure-  
ties for keeping  
the peace—in  
what cases.

*Other Matters.**Hard labour.*

By sect. 118, "Whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this Act, the Court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction."

By the 16 & 17 Vict. c. 99, s. 6, "Every person who, under this Act, shall be sentenced or ordered to be kept in penal servitude, may, during the term of the sentence or order, be confined in any such prison or place of confinement in any part of the United Kingdom, or in any river, port, or harbour of the United Kingdom in which persons under sentence or order of transportation may now by law be confined, or in any other prison in the United Kingdom, or in any part of her Majesty's dominions beyond the seas, or in any port or harbour thereof, as one of her Majesty's principal secretaries of state may from time to time direct; and such person may during such term be kept to hard labour, and otherwise dealt with in all respects as persons sentenced to transportation may now by law be dealt with while so confined."

And by sect. 6 of the 20 & 21 Vict. c. 3, "Where, in any enactment now in force, the expression 'any crime punishable with transportation,' or any expression of the like import, is used, the enactment shall be construed and take effect as applicable also to any crime punishable with penal servitude."

*Solitary confinement and whipping.*

By sect. 119, "Whenever solitary confinement may be awarded for any indictable offence under this Act, the Court may direct the offender to be kept in solitary confinement for any portion or portions of his imprisonment, or of his imprisonment with hard labour, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any indictable offence under this Act, the Court may sentence the offender to be once privately whipped, and the number of strokes and the instrument with which they shall be inflicted shall be specified by the Court in the sentence."

*Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93;*

By sect. 120, "Every offence hereby made punishable on summary conviction may be prosecuted in *England* in the manner directed by the Act of the session holden in the eleventh and twelfth years of Queen *Victoria*, chapter forty-three, so far as no provision is hereby made for any matter or thing which may be required to be done in the course of such prosecution, and may be prosecuted in *Ireland* before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the Act of the session holden in the fourteenth and fifteenth years of Queen *Victoria*, chapter ninety-three, or in such other manner as may be directed by any Act that may be passed for like purposes; and all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this Act: Provided, that nothing in this Act contained shall in any manner alter or affect any enactment relating to procedure in the case of any offence punishable on summary conviction within the City of *London* or the metropolitan police district, or the recovery or application of any penalty or forfeiture for any such offence."

*except in London and the metropolitan police district.*

See sects. 105-110, *ante*, pp. 288, 289.

*The costs of the prosecution of misdemeanours against this Act may be allowed.*

By sect. 121, "The Court before which any indictable misdemeanour against this Act shall be prosecuted or tried, may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony."

As to costs in general, see tit. "*Costs*," Vol. I.

By sect. 122, "Nothing in this Act contained shall extend to *Scotland*, except as hereinbefore otherwise expressly provided."

3. *Indictment for Larceny.*

By sect. 123, "This Act shall commence and take effect on the first day of November, one thousand eight hundred and sixty-one."

Act not to extend to Scotland.  
Commencement of Act.

### III. Indictment for Larceny.

In the first place it should be observed, that in framing an indictment for larceny at common law, or on a particular statute, the general rules, as laid down, *ante*, tit. "*Indictment*," will be applicable, and should be accordingly observed.

Indictment for larceny.

All that will be here noticed will be the particular requisites in the formation of indictments for larceny in general; those for larceny as extended by statute, or for embezzlement, having been already noticed.

*Venue.*—The property in the goods stolen always remaining in the true owner, unaltered by the tortuous caption, every asportation is in law a new trespass. Therefore, the venue may be laid in any county into which they are conveyed, as the offence of taking and converting is there in itself complete (1 *Hale*, 507–8; 1 *Hawk.* c. 33, s. 52; 1 *Chit. C. L.* 944); and this, though the goods were not carried into the county in which the venue is laid until long after the original taking. (*R. v. —*, 1 *Moo. C. C.* 45.) But this, it is said, will not be the case when the original taking is such that the common law will not take cognizance of it, as if goods are taken on the high seas. (1 *Hawk.* c. 33, s. 52; 1 *Chit. C. L.* 178. And as to venue, see now the 14 & 15 Vict. c. 100, s. 23, and the 24 & 25 Vict. c. 96, s. 114, *ante*, p. 297.)

Venue.

The goods must be described with sufficient certainty, and proved substantially as laid (*i. e.* the species), in order that it may appear upon the face of the indictment that the thing taken is such whereof larceny may be committed (2 *East*, P. C. 777), and also that the Court may see what judgment to pass on the whole of the indictment, unless the indictment is amended under the 14 & 15 Vict. c. 100, s. 1. It will not suffice to state the property as "goods and chattels" only, without any more particular description—as "one horse," "one cow," etc. (2 *Hale*, 182.)

Goods must be described.

If a defendant be indicted for stealing a sheep, and it appear to be a lamb, the variance will be fatal, unless amended (4 *Bla. Com.* 240 *Chitty's ed. notes*; 2 *Hale*, 182–3, *acc.* And see *R. v. Loom*, R. & M. 163. *Sed vide*, 3 M. & Sel. 552, *contra.*) So, an indictment for stealing a cow, describing it as a heifer, will be bad, unless amended. (2 *East's P. C.* 616.)

If an animal has the same appellation whether it be alive or dead, and it makes no difference as to the charge, whether it were alive or dead, it may be called, when dead, by the appellation applicable to it when alive. (*R. v. Puckering*, R. & M. 242.) But, if its being alive or dead make any difference in the charge, as regards the punishment or otherwise, then it should be described accordingly. Describing it generally would mean that it was alive. (See *R. v. Edwards*, R. & R. 497; *R. v. Williams*, R. & M. 110; *R. v. Holloway*, 1 C. & P. 128; 2 *East's P. C.* 777.) And, if it turned out that it was dead, there would be a variance which would be fatal to the indictment unless amended. And see sect. 10, *ante*, p. 230.

An indictment for stealing *money* must formerly have specified the



### 3. *Indictment for Larceny.*

pieces of which that money consisted; saying £10 in moneys numbered not being sufficient. (*R. v. Fry, R. & R.* 482. See *ante*, p. 32.) But now by the 14 & 15 Vict. c. 100, s. 18, it is sufficient to describe money simply as "money," without specifying any particular coin. (*Reg. v. Bond, 1 Den. C. C.* 517.) So also by the 14 & 15 Vict. c. 100, s. 18, bank notes may be described simply as "money," without specifying any particular bank note.

Before the late Act it was necessary, in all cases of *embezzlement* by clerks or servants, to state specifically in the indictment some article embezzled. (*R. v. Furneaux, R. & R.* 385; *R. v. Flower, 8 D. & R.* 512; *R. v. Tyers, R. & R.* 402.) But now, except where the offence relates to a chattel (which must be described as in an indictment for larceny), it is sufficient to allege the embezzlement to be of money, without specifying any particular coin or valuable security. (24 & 25 Vict. c. 96, s. 71, *ante*, p. 262; and see *Reg. v. Wright, Dears. & B. C. C.* 431, *ante*, p. 260.) And a variance between the indictment and the evidence as to the amount received is immaterial since the statute. (*Reg. v. Moah, Dears. C. C.* 626, *ante*, p. 260.)

Upon an indictment for stealing printed books, it is not necessary to do more than name so many printed books. (*R. v. Johnson, 3 M. & Sel.* 555.) So, in an indictment for stealing a handkerchief, it is not necessary to describe it as a handkerchief of any specific make or materials, as that it is of silk, linen, or any other particular quality. (*R. v. Johnson, 3 M. & Sel.* 552.)

So the goods may be called by the name by which they are known in the trade; as, a set of new handkerchiefs in a piece was held rightly described as so many handkerchiefs, though they were not separated one from another, the pattern, however, designating each, and they being described in the trade as so many handkerchiefs. (*R. v. Nibbs, R. & M.* 25.)

Several goods mixed, etc.

But in *R. v. Kettle, per Bayley, J., at Chelmsford, 11th March, 1819*, where the prisoner was indicted for stealing "one bushel of oats, one bushel of chaff, and one bushel of beans, of the goods and chattels of A. B., then and there found," and the proof was, that these articles, at the time of the felonious taking, were mixed together, *Bayley, J.*, held, that the articles ought to have been described as mixed; thus, "a certain mixture, consisting of one bushel, etc.;" and he directed an acquittal on this count. (3 *Chit. C. L.* 907, a.) Such a variance would, however, now be amended; and in a recent case, *Alderson, B.*, doubted the ruling in that case, and said that substances *chemically* mixed ought to be so described, but substances *mechanically* mixed ought to be described by the names applicable to them before the mixture. (*Reg. v. Bond, 1 Den. C. C.* 517.) So ingots of tin, or a bar of iron, may be described as so many pounds weight of tin or iron; but, where an article has obtained, in common parlance a name of its own, it would be wrong to describe it by the name of the material of which it is composed. (*Reg. v. Mansfield, 1 C. & M.* 140.)

#### Number.

The quantity or number of things stolen should be stated; for the prosecutor cannot claim restitution of any other goods than those stated on the record. (2 *Hale*, 182.)

It is not necessary to prove in evidence the whole number or quantity stated in cases where different articles are mentioned; for proof that the prisoner stole the coat, or the waistcoat, or the shoes will suffice. (And see *R. v. Ellins, R. & R.* 188; *R. v. Carson, R. & R.* 303.)

#### Election.

Where several articles were mentioned in the indictment as having been stolen, the prosecutor was bound to prove that substantially they were all taken at the same time; and, if he failed in so doing, the judge would in practice compel him to elect upon which act of larceny he would proceed. (*R. v. Smith, Ry. & M.* 295. See *R. v. Ellis, 6 D. & R.* 174; 2 *B. & C.* 145, *S. C.*) But the Court would not interfere merely

because the goods might have been, and probably were, stolen at different times, if it did not appear upon the case that they were so. (*R. v. Dunn*, *R. & M.* 146.)

### 3. Indictment for Larceny.

By the 24 & 25 Vict. c. 96, s. 5, it is provided that several counts may be inserted in the same indictment for any number of distinct acts of stealing, not exceeding three, committed against the same person within the space of six months; and, where a single taking is charged, and several takings at different times are proved, the prosecutor shall not be required to elect, unless there were more than three takings within six months.

It is no objection *in point of law* to an indictment that it charges several distinct felonies in different counts, though it is in the discretion of the judge to prevent a person being tried for several offences at the same time, and the statute has not altered the law in this respect. But the ordinary course of charging the three larcenies as having been committed within six months ought not to be departed from. (*Reg. v. Heywood*, 33 *L. J., M. C.* 133.)

It was held that, although to make a thing the subject of larceny it must be of some value, and stated to be so in the indictment, yet it need not be of the value of any coin known to the law (*Reg. v. Morris*, 9 *C. & P.* 349); but now it is not necessary to state in the indictment the value of the things stolen, except where the value is of the essence of the offence, 14 & 15 Vict. c. 100, s. 24. Value.

Where the property is of a nature to warrant the description it should be stated to be of the "goods and chattels," or "of the moneys," or "of the cattle," etc., as the case may be, of the owner. (*Long's case*, *Cro. Eliz.* 490; 3 *Chit. O. L.* 948; 1 *Leach*, 468.) Property, how stated.

The name of the owner, when known, must be stated. See *ante*, tit. "Indictment." In whom laid.

Any bailee, pawnee, carrier or the like, having a special property, may lay the goods as his own or their real owner's. (2 *East*, *P. C.* 652; *R. v. Remnant*, *R. & R.* 136. See *ante*, 213.)

A servant, sent by his master to receive money from the customers, was robbed of it, and it would seem that the money was wrongly laid as the property of the master, as it had never been in his possession. (*Reg. v. Rudick*, 8 *C. & P.* 237, *per Alderson, B., sed quære.*)

If a father buy cloth which is made into trousers for his son, the better course is to lay the property in the father. (*Reg. v. Hughes*, 1 *C. & M.* 593.)

Goods belonging to a guest at an inn may be laid either as the property of the landlord or of the guest. (*Jane Todd's case*, *Old Bailey*, *July*, 1711.)

So of goods stolen from a washerwoman, cattle from an agister, goods from a stage-coachman. (*Packer's case*, *Old Bailey*, *April*, 1714.)

Goods in a ready-furnished lodging must be laid to be the property of the lodger and not of the landlord, except when stolen by the lodger himself. (*R. v. Belstead*, *R. & R.* 411; *R. v. Brunswick*, *R. & M.* 26; and see the 24 & 25 Vict. c. 96, s. 74, *ante*, 264.)

A box, of which two stewards of a benefit society had a key, was stolen from a room in a public-house. The landlord ought to have had a key, but had not. *Parke, J.*, held that the property might be laid in the landlord. (*R. v. Wymer*, 4 *C. & P.* 391.)

Goods seized under a writ of *fi. fa.* may be described as the property of the party against whom the writ issued, until they are sold, although they are *in custodia legis*. (*R. v. Eastall*, 2 *Russ.* 158.)

Clothes or other necessities furnished by a father to and used by his child may be laid as the property of either; but it is better to lay the property in the child. (*R. v. Hayne*, 12 *Co.* 113; 2 *East*, *P. C.* 654; *R. v. Forsgate*, 1 *Leach*, 463, 464, n.)

Where A. had taken a house in which B., his relation, carried on a

### 3. *Indictment for Larceny.*

trade for the benefit of A. and his family, having himself neither a share in the profits nor a salary, but having authority to sell any part of the stock, and to buy goods for the shop, accounting to A., it was held that B. was a bailee of the goods in the shop, and that they might be laid as his property. (*Reg. v. Bird*, 9 C. & P. 44.)

A married woman was sent by her husband to sell sheep, and receive the money; she did so, and was robbed of £5, part of the price of the sheep; it was holden, that the money was properly described as the property of her husband. (*R. v. Roberts*, 7 C. & P. 485.)

Where goods have been parted with by the bailee, but under a mistake, and a larceny of them is committed, they may be laid as the property of the bailee. (*Reg. v. Vincent*, 2 Den. C. C. 464.)

Where a bailor steals his own goods from his bailee, they must be described as the goods of the bailee. (*R. v. Wilkinson*, R. & R. 470; *R. v. Bramley*, *Id.* 478.)

Where only bare charge.

Where the party whose goods have been stolen had neither the property nor the possession (and, for this purpose, the possession of a *feme covert* or servant is, generally speaking, the possession of the husband or master), the prisoner ought to be acquitted on that indictment. Therefore, if A. B. order a hat to be made for him, and the hatter makes it, and it is stolen before it is delivered to the customer, it cannot be laid as the hat of A. B. (*Reg. v. Adams*, R. & R. 225; *ante*, 208. See further, *ante*, 201.) But, where the money has never been in the possession of the master, as where it was received by the servant for him, but he is robbed of it before his arrival at home, it should be laid as the property of the servant, not of the master. (*Reg. v. Rudick*, 8 C. & P. 237.)

Joint ownership and survivorship.

In *R. v. Gaby* (R. & R. 178), D. and C. were partners: C. died intestate, leaving a widow and children. From the time of his death, the widow acted as partner with D., and attended the business of the shop. Three weeks after C.'s death, part of the goods were stolen; they were described in the indictment as the goods of D. and the widow. On case reserved, the description was held right. Where a father and son took a farm upon their joint account, and kept a flock of sheep, their joint property, and the father, upon the death of his son, managed the farm for the joint benefit of himself and his son's children, who were infants, it was holden, upon an indictment for stealing sheep, bred from the joint-stock some before and some after the son's death, that the property was well laid in the father and son's children. (*R. v. Scott*, R. & R. 13.)

Bodies of persons.

Where goods are vested in a body of persons not incorporated, they must not be described as the property of the body, but of the individuals who constitute it, or some of them, as in the case of partners, trustees, and joint-stock companies. (*R. v. Sherrington*, 1 Leach, 513; *R. v. Beacall*, R. & M. 15.) Where a Bible and hymn-book, which had been presented to a Methodist society, were stolen from the Methodist chapel, and were described as the property of John Bennett and others, Bennett being one of the society, and also one of the trustees of the chapel, *Parke*, B., held it to be correct. (*R. v. Boulton*, 5 C. & P. 537.) But, when the goods of a corporation are stolen, they must be laid to be the property of the corporation, in their corporate name, and not in the names of the individuals who compose it. (*R. v. Patrick*, 2 East's P. C. 1059; 1 Leach, 253. See *ante*, 24, 25.)

Joint-stock companies, parish officers, etc.

In an indictment for embezzlement, a collector of poor and other rates in the parish of St. Paul's, Covent Garden, was held to be rightly described under the 10 Geo. 4, c. 68, as a servant to the committee of management of the affairs of that parish, though he was elected by the vestrymen of the parish. (*Reg. v. Callahan*, 8 C. & P. 154.)

Property belonging to the overseers of the poor for the time being of a

parish may be described as such, and the names of the overseers need not be stated. (7 Geo. 4, c. 64, s. 16; and see the 55 Geo. 3, c. 137, s. 1; *R. v. West, R. & R.* 359.)

The guardians of the poor of a union or of a parish may lay or state the property stolen to be in them by that title. (5 & 6 Will. 4, c. 69, s. 7; and see the 5 & 6 Vict. c. 57, s. 16.)

The moneys, goods, etc., belonging to any friendly society must be described to be the property of the trustees of the society for the time being. (18 & 19 Vict. c. 63, s. 18; *Reg. v. Loose, 1 Bell, C. C.* 259; *ante*, 27.)

So, an indictment for forgery, with intent to defraud a joint-stock bank, may lay the intent to be to defraud A. B. (one of the shareholders) and others; and they are not bound to prosecute in the name of the public officer. (*Reg. v. Beard, 8 C. & P.* 143.)

But, in an indictment for a forgery laid with intent to defraud a public officer of a joint-stock bank, it is necessary to aver that he was nominated under the 7 Geo. 4, c. 46. (*Ib.*)

It is sufficient in an indictment for stealing the property of a joint-stock banking company, to allege the stolen property to belong to one of the partners named and others under the 7 Geo. 4, c. 64, s. 14. (*Reg. v. Pritchard, 30 L. J., M. C.* 169; *Leigh & Cuve, 169.*)

He who steals goods belonging to a parish church may be indicted for stealing the goods of the parishioners. (1 *Hawk. c.* 33, s. 29. See *post*, tit. "*Sacrilege*," Vol. V.)

Church.

In an indictment for stealing lead or other effects from a church, there is no occasion to lay the property in any one; but it may be laid in the rector or vicar. (2 *East's P. C.* 651; *post*, tit. "*Sacrilege*," Vol. V.) And, if the theft be effected in time of vacancy, the offender may be indicted for stealing the goods of the chapel, in the custody of those who have the care of them; or, if the place be a parish church, the property may be laid in the parishioners at large. (1 *Hale*, 512; *R. v. Walker, 3 Campb.* 264-5; 1 *Hawk. c.* 33, s. 45.) But the goods in a dissenting chapel, vested in trustees, cannot be described as the goods of a servant who has merely the custody of the chapel and things in it, to clean and keep it in order, though he has the key of the chapel, and no other person but the minister has another key. (*R. v. Hutchinson, R. & R.* 412. And see 2 *East's P. C.* 652; *Id.* 633; *R. v. Boulton, 5 C. & P.* 537.)

It hath been adjudged, that he who takes off a shroud from a dead corpse may be indicted as having stolen it from the executors of, or those who buried, the deceased, and not from the deceased himself. (2 *East's P. C.* 652.) And, though in corpses there can be no property, wherefore to steal a dead corpse is no felony, yet it is a misdemeanour. (2 *East's P. C.* 652; *R. v. Lynn, 2 T. R.* 733. See tit. "*Bodies (Dead), Stealing of*," Vol. I.)

Stealing a shroud,

or a corpse.

In an indictment for stealing property which had belonged to a deceased person who appointed executors who would not prove the will, it was held that the property must be laid in the ordinary, and not in a person who, after the commission of the offence but before the indictment, had taken out letters of administration with the will annexed; because the rights of an administrator only commence from the date of the letters, as distinguished from those of an executor, which commence, not from the granting of the probate, but from the death of the testator. (*R. v. Smith, 7 C. & P.* 147.)

Property of dead persons.

A party may be guilty of larceny, though the owner of the goods is unknown; and, where that is the case, it may be stated in the indictment that the things stolen were the goods "*of a person to the jurors unknown*." But, upon prosecutions of this kind, some proof must be given, sufficient

Where the owner is unknown.

3. Indictment for Larceny.

### 3. *Indictment for Larceny.*

to raise a reasonable presumption that the taking was felonious, or *invito domino*; and Lord Hale, C.J., said, that he never would convict any person for stealing the goods *cujusdam ignoti*, merely because the person would not give an account how he came by them, unless there were due proof made that a felony had been committed of those goods. (See 2 Russ. 169; 1 Hale, 512; 2 Hale, 290.) An indictment, however, alleging the goods to be the property of a person unknown, will be bad *if the owner be known*; and in such case the prisoner will be acquitted on the indictment so framed, unless it is amended. (*R. v. Walker*, 3 Campb. 264; 2 East's P. C. 651; Holt, C. N. P. 505.)

The 7 & 8 Geo. 4, c. 64, removes many difficulties in stating the names of the owners of property in cases of corporations, partnerships, companies, counties, inhabitants, parishes, townships, highways, turnpike trusts, commissioners of sewers, the Chelsea Hospital, and friendly societies. See, also, as to poor in unions, the 5 & 6 Will. 4, c. 69; and as to friendly societies, the 18 & 19 Vict. c. 63, s. 18. (See *ante*, tit. "*Indictment*," p. 23 to 28.)

As to describing the ownership of records, see *ante*, 239; and furniture in lodgings, *ante*, 265.

[*The Taking, etc.*].—The indictment must allege that the prisoner took and carried away the goods, and that it was done feloniously. (1 Hale, 508; 2 Hale, 184.)

## § IV. *Forms.*

### LIST OF FORMS.

*Simple Larceny, etc.* See Nos. (1), (2).

*Larceny, etc., of Cattle or other Animals, etc.* See Nos. (3) to (30).

———— of *Written Instruments.* See Nos. (31) to (35).

———— of *Things attached to or growing on Land.* See Nos. (36) to (51).

———— from *Mines.* See Nos. (52), (53).

———— from the *Person, and other like Offences.* See Nos. (54) to (63).

*Sacrilege, Burglary, and Housebreaking, etc.* See Nos. (64) to (74).

*Larceny in the House.* See Nos. (75), (76).

———— in *Manufactories.* See No. (77).

———— etc., in *Ships, Wharfs, etc.* See Nos. (78) to (83).

———— or *Embezzlement by Clerks, Servants, or Persons in the Public Service.* See Nos. (84) to (89).

———— by *Tenants or Lodgers.* See No. (90).

*Frauds by Agents, Bankers, or Factors.* See Nos. (91) to (98).

*Obtaining Money by False Pretences, etc.* See Nos. (99) to (101).

*Receiving Stolen Goods, etc.* See Nos. (102) to (106).

*Aiding and Abetting, etc., in Cases of Summary Conviction.* See Nos. (107), (108).

*Restitution and Recovery of Stolen Property.* See No. 109.

4. *Forms.*

*Summary Proceedings.* See No. 110 to the end.

The general forms for informations, warrants, commitments, and convictions will be found under those several titles. The mode of stating the offence may in general be taken from the particular form of indictment applicable to the offence; and in cases of summary jurisdiction the forms of conviction are given.

\_\_\_\_\_ } *The jurors for our lady the Queen upon their oath present, that C. D., to wit.* } *on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, in the year of our Lord* \* ,  
[one silver spoon] and [one table-cloth], of the goods and chattels of A. B., feloniously did steal, take, and carry away; against the peace of our lady the Queen, her crown and dignity.

(1) General form of indictment for larceny at common law.

An indictment for larceny by a bailee may be in the above form (see sect. 3 of the statute); and it is not necessary to allege that the defendant is a bailee.

\_\_\_\_\_ (Add to the last form (1).) *And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. D. afterwards, and within the space of six calendar months from the time of the committing of the said offence in the first count of this indictment charged and stated, to wit, on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *in the year aforesaid* [one silver sugar-basin, etc.] of the goods and chattels of the said A. B. feloniously did steal, take, and carry away; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

(2) Indictment for other distinct acts of stealing, s. 5.

\_\_\_\_\_ (Commence as ante, form (1), to the \*.) [one gelding], ["horse, mare, gelding, colt, or filly, bull, cow, ox, heifer, calf, ram, ewe, sheep, or lamb, according to the fact"], of the goods and chattels of A. B., feloniously did steal, take, and lead away; against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

(3) Indictment for stealing a horse, etc., s. 10.

\_\_\_\_\_ (Commence as ante, form (1), to the \*.) [one sheep], ["any horse, mare, gelding, colt, or filly, or any bull, cow, ox, heifer, or calf, or any ram, ewe, sheep, or lamb"] of the goods and chattels of A. B., wilfully and feloniously did kill, with intent feloniously to steal, take, and carry away part of the carcase ["the carcase or skin, or any part of the cattle so killed"]; that is to say, the [inward fat] of the said sheep; against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity. [Add other counts, as the case may suggest.]

(4) Indictment for killing any animal with intent to steal, s. 11.

\_\_\_\_\_ *For that you* [or he the said A. B.], *on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, at the parish of* \_\_\_\_\_ *, in the said county, unlawfully and wilfully did* \_\_\_\_\_ *course* [or hunt, snare, or carry away, or kill, wound, or attempt to kill or wound] \_\_\_\_\_ *certain deer, to wit, one fallow deer of the value of* \_\_\_\_\_ *pounds, then kept* \_\_\_\_\_ *and being in a certain unenclosed part of a certain forest* [chase or purlieu] *there, called* \_\_\_\_\_ *, contrary, etc.*

(5) Conviction for hunting deer in unenclosed places (first offence), s. 12.

## 4. Forms.

(6) Indictment for hunting or stealing deer in unenclosed places after a previous conviction, s. 12.

— } *The jurors for our lady the Queen upon their oath present, that C. D., to wit. } on the day of , in the year of our Lord , at , in the county of , was duly convicted before J. P., one of her said Majesty's justices of the peace for the said county of , for that he the said C. D., on the day of [here set out the previous offence as in the form of conviction above to the end]; and the said J. P. therefore adjudged the said C. D., for his said offence, to forfeit and pay the sum of fifty pounds, and also to pay the sum of ten shillings for costs; and, in default of immediate payment, to be imprisoned in , there to be kept to hard labour for the space of calendar months, unless the said sums should be sooner paid [following the conviction]. And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. D. afterwards, and after he was so convicted as aforesaid, to wit, on the day of , in the year aforesaid, in a certain part of the said forest situate as aforesaid, one other fallow deer of the value of pounds, then and there being in the said last-mentioned unenclosed part of the said forest, unlawfully, wilfully, and feloniously did hunt, kill, and carry away ["course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound"], against the form, etc.*

(7) Indictment for hunting or stealing deer in enclosed places, s. 13.

(Commence as ante, form (1).) *in certain enclosed land ["in the enclosed part of any forest, chase, or purlieu, or in any enclosed land where deer shall be usually kept"] situate at , in the parish of , in the county of , in the occupation of J. N., where deer had been and then were usually kept, one fallow deer of the value of pounds, the property of the said J. N., then and there kept and being in the said enclosed land, unlawfully, wilfully, and feloniously did hunt, kill, and carry away ["course, hunt, snare, or carry away, or kill or wound, or attempt to kill or wound"], against the form, etc.*

(8) Conviction for having possession of stolen deer or engine, s. 14.

*For that he the said C. D., on the day of at in the parish of , in the county of , unlawfully had in his possession [or had on his premises there situate and with his knowledge], and the same was there found, a certain part of a deer, to wit [the hindquarters or the head or skin of a deer], then lately before unlawfully and wilfully carried away from [describing the place as in the above forms] [or a snare or engine for the taking of deer]; and that upon the said C. D. being taken [or summoned] before me the said justice now here, the said C. D. does not satisfy me the said justice that he came lawfully by the said deer [or head or skin] [or, where a snare has been found, say that he hath or then had a lawful occasion for the said snare or engine, and that he did not keep the same for any unlawful purpose], but hath altogether failed in doing so; contrary, etc.*

(9) Complaint for a summons against a person through whose hands venison has passed, s. 14.

— } *The information [or complaint of A. B., of the parish of , to wit. } in the county of , labourer, taken upon oath before me the undersigned, one of her Majesty's justices of the peace, this day of , in the year of our Lord , who saith that lately upon part of a deer, to wit, the hindquarter thereof being duly found in possession [or on the premises] of one C. D., of etc., at ; and the said C. D., being thereupon, to wit, on the day of instant, taken [or summoned] before me the said justice [or J. P., Esq., one of her Majesty's justices of the peace in and for the said county of ], the said justice was informed and given to understand that one E. F., of etc., had had possession thereof on the day of .*

(10) Summons thereon to E. F., s. 14.

Proceed as in the usual form of summons [see tit. "Summons," Vol. V.], reciting the complaint as above stated, and instead of saying "to answer to the said information or complaint, etc.," say, to satisfy me the said justice that you have come lawfully by the said part of the said deer, and to be further dealt with according to law.

For that you [or he the said C. D.] on the \_\_\_\_\_ day of \_\_\_\_\_, 4. Forms.  
 at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_,  
 unlawfully and wilfully did set [or use] a certain engine [or snare] called \_\_\_\_\_ (11) Conviction  
 \_\_\_\_\_, for the purpose of then taking [or killing] deer in a certain part of \_\_\_\_\_ for setting en-  
 a certain forest [or chase or purlieu] there situate, called \_\_\_\_\_ [or in a gines for deer,  
 certain fence or bank, dividing a certain forest called \_\_\_\_\_ from certain s. 15.  
 land called \_\_\_\_\_ adjoining thereto; or in certain enclosed land there situate,  
 in the occupation of one E. F., and in which enclosed land deer were then and  
 usually kept], contrary, etc.

For that you [or he the said C. D.] on, etc., at, etc., unlawfully and wilfully (12) Conviction  
 did destroy a certain part, to wit, twenty feet of the fence of certain land there for damaging  
 called \_\_\_\_\_ [or in the occupation of E. F.], where deer were then and fence of land  
 usually kept, contrary, etc. where deer are kept, s. 15.

(Commence as ante, form (1).) at \_\_\_\_\_ in the parish of \_\_\_\_\_, (13) Indictment  
 in the county of \_\_\_\_\_, unlawfully and feloniously did beat [or wound] for assaulting  
 one A. B., he being then [an assistant to one E. F.] a person entrusted with the deerkeepers, s.  
 care of deer then usually kept and being within certain enclosed [or unenclosed] 16.  
 land there situate, and in the due execution of the powers given to him in that  
 behalf by the statute in that case made and provided, against the form, etc.

(Commence as ante, form (1).) between the expiration of the first hour after sunset (14) Indictment  
 and the beginning of the last hour before sunrise, to wit, about the hour of eleven in for taking hares  
 the night of the same day, in a certain warren and ground [“in any warren or in warrens, etc.  
 ground lawfully used for the breeding or keeping of hares or rabbits, whether at night, s. 17  
 the same be enclosed or not”] in the occupation of J. N., situate in the parish  
 of \_\_\_\_\_, in the county of \_\_\_\_\_, the said warren and ground  
 then being lawfully used for the breeding and keeping of hares, unlawfully and  
 wilfully did take [or “kill”] against the form, etc.

Add a count for taking rabbits if necessary.

For taking game or rabbits by night, see also the 9 Geo. 4, c. 69, s. 1,  
 “Game,” Vol. II.

For that he the said C. D., on the \_\_\_\_\_ day of \_\_\_\_\_, in the (15) Conviction  
 year of our Lord \_\_\_\_\_, unlawfully did steal a certain dog, to wit, a for stealing a  
 [greyhound] of the price and value of \_\_\_\_\_, the property of A. B., dog, s. 18.  
 contrary, etc.

\_\_\_\_\_ } The jurors for our lady the Queen upon their oaths present that (16) Indictment  
 to wit. } C. D., on the \_\_\_\_\_ day of \_\_\_\_\_, in the twelfth year for stealing a  
 of the reign of our sovereign lady Victoria, at \_\_\_\_\_, in the county afore- dog after a pre-  
 said, was duly convicted before J. P., Esq., and the Rev. O. R., clerk, two of her vious conviction,  
 Majesty's justices of the peace for the said county, for that he the said C. D., on s. 18.  
 [etc., as in the first conviction to the words] against the form of the statute in  
 such case made and provided: and the said C. D. was thereupon then and there  
 adjudged for his said offence, to be committed to and imprisoned in the house of  
 correction in and for the said county for the term of [three] months. And the jurors  
 aforesaid, upon their oath aforesaid, do further present that the said C. D. after-  
 wards and after he had been so convicted as aforesaid, to wit, on the first day of  
 June in the year last aforesaid, one dog of the value of two pounds, the property  
 of J. N., unlawfully did steal, take, and carry away; against the form of the statute  
 in such case made and provided, and against the peace of our lady the Queen, her  
 crown and dignity.

For that he the said C. D. on, etc., at, etc., unlawfully did have in his possession (17) Conviction  
 [or “on his premises”] there a certain stolen dog [or “the skin of a certain for having pos-  
 stolen dog”], to wit, a [greyhound], the property of one A. B., by a certain evil session of a  
 x 2 stolen dog, s. 19.



## 4. Forms.

*disposed person unknown then lately before unlawfully stolen, he the said C. D., well knowing the said dog to have been unlawfully stolen [or "the said skin to be the skin of a stolen dog"], contrary to, etc.*

(18) Indictment for having possession of a stolen dog after a previous conviction, s. 19.

(Commence as in the last indictment, form (16) to the words "the said C. D. on" and then set out the conviction as in form (17), and conclude as follows :) *and the said C. D. was thereupon then and there adjudged for his said offence to pay the sum of fifteen pounds. And the jurors aforesaid upon their oath aforesaid do further present that the said C. D. afterwards and after he had been so convicted as aforesaid, to wit, on the first day of June in the year last aforesaid at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, did have in his possession [or "on his premises"] there a certain stolen dog (conclude as in form (17).)*

(19) Indictment for taking reward as to a stolen dog, s. 20.

(Commence as ante, form (1).) *unlawfully and corruptly did take from A. B. certain money and reward, to wit, the sum of \_\_\_\_\_, under pretence [or "upon account"] of aiding the said A. B. ["any person"] to recover a certain dog before then unlawfully stolen [or (then in the possession of one E. F., the said E. F. not being the owner thereof) "in the possession of any person not being the owner thereof"], contrary to, etc.*

(20) Conviction for stealing beast or bird not the subject of larceny, s. 21.

*For that he the said C. D. on the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, unlawfully did steal [or unlawfully did kill with intent then to steal the same] a certain bird [or beast], to wit, a parrot of the price and value of \_\_\_\_\_, the property of A. B., the complainant, which was then and ordinarily kept in a state of confinement [or for a domestic purpose], the said bird not being the subject of larceny at common law, contrary, etc.*

(21) Conviction after a previous conviction, s. 21.

*Describe the offence as in the preceding form for a first offence adding at the conclusion, "he the said C. D., having been previously convicted of the like offence."*

(22) Conviction for having possession of such bird or beast, s. 22.

*For that he the said C. D., on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, unlawfully had in his possession [or "on his premises"] there, and the same was there found, a certain bird [or beast], to wit, a \_\_\_\_\_ of the price and value of \_\_\_\_\_ [or the plumage of a certain bird; or the skin of a certain beast; or a certain animal or part of a certain animal, called \_\_\_\_\_], the property of the said A. B. the complainant, which had been theretofore and ordinarily kept in a state of confinement [or for a domestic purpose], not being the subject of larceny at common law, and which had then lately before been unlawfully stolen by a certain evil-disposed person [or by a person whose name is unknown], he the said C. D. then and there well knowing the said bird [or beast or animal] to have been unlawfully stolen [or that the said plumage was the plumage of a stolen bird; or that the said skin was the skin of a stolen beast; or that the said part was the part of a stolen animal].*

(23) Conviction for killing house-doves or pigeons, s. 23.

*For that he the said C. D., on \_\_\_\_\_ at \_\_\_\_\_, unlawfully and wilfully did kill [or wound or take] a certain house-dove [or pigeon] of the price and value of \_\_\_\_\_, the property of the said A. B., the complainant, under such circumstances as did not amount to larceny at common law, contrary, etc.*

(24) Conviction for taking fish in private water not belonging to a dwelling-house, s. 24.

*For that he the said C. D., on \_\_\_\_\_ at \_\_\_\_\_, unlawfully and wilfully did take [or destroy; or attempt to take or destroy] otherwise than by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, to wit, at \_\_\_\_\_ o'clock at \_\_\_\_\_, [five]*

fish called [perch], of the price and value of [sixpence], then being found in certain water, to wit, a pond [or stream] of water there, being the private property of the [said] A. B., the complainant [or wherein the said A. B., the complainant, then had a private right of fishery], and not running through or being in any land adjoining or belonging to the dwelling-house of any person being the owner of the said water, or having a right of fishery therein; contrary, etc.

## 4. Forms.

For that he the said C. D., on \_\_\_\_\_, at \_\_\_\_\_, by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, to wit, about the hour of \_\_\_\_\_ o'clock in the forenoon of the same day, unlawfully and wilfully did take [or destroy] [five] fish called [perch], of the price and value of [sixpence], then being found in certain water there situate, called \_\_\_\_\_, running through and being in certain land belonging [or adjoining] to the dwelling-house of one [or the said] A. B., the complainant, and of which water the said A. B. was then the owner [or in which said water the said A. B. then had a private right of fishery, contrary, etc.

(25) Conviction for angling in the daytime in water adjoining a dwelling-house, s. 24.

For that he the said C. D., on \_\_\_\_\_, at \_\_\_\_\_, by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, to wit, about the hour of \_\_\_\_\_ o'clock in the forenoon of the same day unlawfully and wilfully did take [or destroy] [five] fish called [perch] of the price and value of [sixpence], then being found in a certain pond [or stream] of water there, the private property of A. B. [or wherein A. B. then had a private right of fishery], and not running through or being in any land adjoining or belonging to the dwelling-house of any person being the owner of the said water, or having a right of fishery therein, contrary, etc.

(26) Conviction for angling in other water, s. 24.

(Commence as ante, form (1).) in a certain stream of water ["any water"] then running and being in certain land adjoining to the dwelling-house ["any land adjoining or belonging to the dwelling-house"] of J. N., situate in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, the said J. N. then being the owner of the said water [or the said J. N. then having a right of fishery in the said water], thirty fish called carp, and thirty fish called tench, unlawfully and wilfully did take [or destroy] otherwise than by angling between the beginning of the last hour before sunrise and the expiration of the first hour after sunset, against the form, etc.

(27) Indictment for taking fish in water adjoining a dwelling-house, s. 24.

(Commence as ante, form (1).) from a certain oyster-bed ["any oyster-bed, laying, or fishery, being the property of any other person, and sufficiently marked out or known as such"] called \_\_\_\_\_, the property of J. N., and sufficiently [marked out and] known as the property of the said J. N., one hundred oysters feloniously did steal, take, and carry away, against the form, etc.

(28) Indictment for stealing oysters, s. 26.

(Commence as ante, form (1).) within the limits of a certain oyster-bed ["any oyster-bed, laying, or fishery"] called \_\_\_\_\_, the property of J. N., and sufficiently [marked out and] known as the property of the said J. N., unlawfully and wilfully did use a certain dredge ["any dredge, or any net, instrument, or engine whatsoever"] for the purpose of then and there taking oysters ["oysters or oyster-brood"], against the form, etc.

(29) Indictment for using a dredge, s. 26.

(Commence as ante, form (1).) upon the ground ["ground or soil"] of a certain oyster-fishery called \_\_\_\_\_, the property of J. N., and sufficiently [marked out and] known as the property of the said J. N., with a certain net ["any net, instrument, or engine"] unlawfully and wilfully did drag, against the form, etc.

(30) Indictment for dragging upon the ground of an oyster-fishery, s. 26.

(Commence as ante, form (1).) [one] bill of exchange for the payment of [fifty pounds], the property of A. B., feloniously did steal, take, and carry away, the said

(31) Indictment for stealing a valuable security, s. 27

4. *Forms.* *sum of [fifty pounds], secured and payable by and upon the said bill of exchange, being then due and unsatisfied to the said A. B., against the form, etc.*

(32) Indictment for stealing a document of title to real estate, s. 28.

(Commence as ante, form (1).) *a certain deed, the property of J. N., being [or containing] evidence of the title [or part of the title] of the said J. N. to a certain real estate [or to part of a certain real estate] called , in which said real estate the said J. N. then had, and still hath, an interest, feloniously did steal, take, and carry away [or feloniously and unlawfully, and for a fraudulent purpose, did destroy] [destroy, cancel, obliterate, or conceal], against the form, etc. [Add a second or more counts, describing the instrument, as the case may suggest, and also a count specifying the fraudulent purpose, where the indictment alleges one.]*

(33) Indictment for stealing a will, s. 29.

(Commence as ante, form (1).) *a certain will and testamentary instrument ["the whole or any part of any will, codicil, or other testamentary instrument"] of one J. N., feloniously did steal, take, and carry away [or feloniously, unlawfully, and for a fraudulent purpose, did destroy] [destroy, cancel, obliterate, or conceal], against the form, etc.*

(34) Indictment for stealing a record, s. 30.

(Commence as ante, form (1).) *a certain [judgment roll of the Court of our lady now the Queen before the Queen herself] feloniously did steal, take, and carry away, against the form, etc. [Add other counts, as the case may suggest.]*

(35) Indictment for taking a record from its place of deposit, s. 30.

(Commence as ante, form (1).) *a certain [judgment roll of the Court of our lady the now Queen before the Queen herself], in the treasury of the said Court there being then deposited (the said treasury being the place of deposit of the said judgment roll for the time being), feloniously, and for a fraudulent purpose, did take from its said place of deposit, against the form, etc.*

(36) Indictment for stealing lead from a dwelling-house, s. 31.

(Commence as ante, form (1).) *[twenty pounds weight of lead], ["lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material"], the property of A. B., then being fixed in and to ["in or to"] a certain building, to wit, the dwelling-house of the said A. B., situate in the parish of , in the county of , feloniously did steal, take, and carry away, against the form, etc. [Add counts as the case may suggest.]*

(37) Indictment for ripping lead from a building with intent to steal, s. 31.

(Commence as ante, form (1).) *[twenty pounds weight of lead] ["any glass or wood-work belonging to any building whatsoever, or any lead, iron, copper, brass, or other metal, or any utensil or fixture, whether made of metal or other material, or of both"], the property of A. B., then being fixed in and to ["in or to"] the dwelling-house ["any building whatsoever"] of the said A. B., situate in the parish of , in the county of , feloniously did rip, cut, and break ["rip, cut, or break"], with intent the same then and there feloniously to steal, take, and carry away, against the form, etc. [Add other counts, as the case may suggest.]*

(38) Indictment for stealing lead in land which is private property, s. 31.

(Commence as ante, form (1).) *[one leaden vase] and [twenty pounds weight of lead] ["anything made of metal"] the property of A. B., then being fixed in certain land which was then private property, to wit, in a [shrubbery] of the said A. B., situate in the parish of , in the county of , ["in any land being private property"], then and there feloniously did steal, take, and carry away [or feloniously did rip, cut, and break, with intent the same then and there feloniously to steal, take, and carry away], against the form, etc. [Add other counts, as the case may suggest.]*

Indictments may readily be framed from the above for stealing metal

used for a fence to a dwelling-house, or fixed in a square, etc., following the words of the statute.

4. *Forms.*

(Commence as ante, form (1).) *one oak-tree* ["the whole or any part of any tree, sapling, or shrub, or any underwood"] *of the value of two pounds, the property of J. N., then growing in a certain park* ["park, pleasure-ground, garden, orchard, avenue, or any ground adjoining or belonging to a dwelling-house"] *of the said J. N., situate in the parish of* , *in the county of* , *in the said park \* feloniously did steal, take, and carry away, against the form, etc.*

(39) Indictment for stealing trees in a park above the value of £1, s. 32.

(Proceed as in the above form to the asterisk, omitting the allegation of value, and then thus:)—*feloniously did cut, destroy, and damage* ["cut, break, root up, or otherwise destroy or damage"], *with intent the same then and there feloniously to steal, take, and carry away, thereby then and there doing injury unto the said A. B. to an amount exceeding the sum of one pound, to wit, to the amount of [ten pounds], against the form, etc.*

(40) Indictment for cutting, etc., trees, with intent to steal, s. 32.

An indictment for stealing or cutting trees above the value of £5 elsewhere than in a park, etc., may easily be framed from one or other of the above forms.

*For that he the said C. D., on, etc., at, etc., [one beech-tree], ["the whole or any part of any tree, sapling, or shrub, or any underwood"], of the value of one shilling at the least, to wit, of the value of [two shillings], the property of A. B., then growing on certain land there situate [in the occupation of] the said A. B., unlawfully did steal, take, and carry away, against the form of the statute in that case made and provided, etc.*

(41) Conviction for a first offence in stealing trees, etc., of the value of 1s., s. 33.

(Commence as ante, form (1).) *at* , *in the county of* , *was duly convicted before J. P., one of her Majesty's justices of the peace for the said county of* , *for that he the said C. D., on etc. [as in the first conviction, to the words] against the form of the statute in that case made and provided; and the said C. D. was thereupon then adjudged, for his said offence, to forfeit, etc., and in default, etc. [as in the conviction]. And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. D., being so convicted as aforesaid, afterwards, on, etc., at, etc., was duly convicted before J. S., one of her Majesty's justices of the peace for the said county of* , *for that he the said C. D., on [etc., stating the second conviction in the same manner as the first is directed to be stated; and then proceed thus:] And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D., after he had been so twice convicted as aforesaid, on, etc., [one beech-tree] of the value of one shilling at the least, to wit, of the value of [two shillings], the property of A. B., then growing in certain land situate in the parish of* , *in the county of* , *feloniously did steal, take, and carry away, against the form of the statute in such case made and provided, and against the peace of our said lady the Queen, her crown and dignity. [Add other counts, as the case may suggest.]*

(42) Indictment for stealing trees to the value of 1s. at least, after two previous convictions, s. 33.

A commitment or indictment for cutting or damaging trees, etc., of the value of one shilling, with intent to steal the same, within the meaning of the above 33rd section, may be readily framed from the preceding forms.

*For that he the said C. D., on, etc., at, etc., [two wooden pales] ["any part of any live or dead fence, or any wooden post, pale, wire, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively"], of the value, to wit, of [one shilling], the property of A. B., then and there being, and then and there being cast, set up, and used as a dead fence, unlawfully did steal, take, and carry away, against the form of the statute in that case made and provided: I,*

(43) Conviction for a first offence in stealing, etc., gates, fences, etc s. 34.

4. *Forms.* *the said J. P., do therefore adjudge the said C. D., for his said offence, to forfeit and pay the sum of [five pounds], over and above the value of the said pales so stolen as aforesaid, and the further sum of [one shilling], being the value of the said pales, and also to pay, etc.*

(44) Conviction for a first offence, in cutting, etc., fences, etc., with intent to steal them, s. 34.

*For that he the said C. D., on, etc., at, etc., [two wooden pales] ["any part of any live or dead fence, or any wooden post, pale, wire, or rail set up or used as a fence, or any stile or gate, or any part thereof respectively"], of the value of [one shilling], the property of A. B., then and there being, and set up and used as a dead fence, then and there unlawfully did cut, break, and throw down, with intent the same then and there unlawfully to steal, take, and carry away, thereby and therein then and there doing an injury unto the said A. B. to the amount of [two shillings], against the form of the statute in that case made and provided: I, the said J. P., do therefore adjudge the said C. D., for his said offence, to forfeit and pay, etc. [Conclude as directed in the preceding form.]*

(45) Conviction for having a stolen tree, fence, or gate in defendant's possession, s. 35.

*Be it remembered, that, on, etc., at, etc., C. D. is convicted before me, J. P., to wit. } one of her Majesty's justices of the peace in and for the said county, for that, on, etc., at, etc., aforesaid, a certain [beech-tree] ["the whole or any part of any tree, sapling, or shrub, or any underwood, or any part of any live or dead fence, or any post, pale, wire, rail, stile, or gate, or any part thereof"], of the value of [two shillings], was found on the premises ["in the possession or on the premises"] of the said C. D., there situate; and that he the said C. D., being now here taken [or summoned] before me the said J. P., as such justice as aforesaid, doth not satisfy me, the said J. P., that he came lawfully by the said tree, but hath altogether failed in so doing, against the form of the statute in that case made and provided: I, etc.*

(46) Conviction for a first offence, in stealing fruit, etc., in a garden, etc., s. 36.

*For that he the said C. D., on, etc., at, etc., [one hundred peaches] ["any plant, root, fruit, or vegetable production"], of the value of twenty shillings, the property of A. B., in a certain garden ["garden, orchard, pleasure-ground, nursery-ground, hothouse, greenhouse, or conservatory"] of the said A. B. there situate, then growing in the said garden, unlawfully did steal, take, and carry away, against the form of the statute in that case made and provided: I, the said J. P., do therefore adjudge the said C. D., for his said offence, to, etc.*

(47) Conviction for a first offence, in damaging, etc., fruit, etc., with intent to steal, s. 36.

*For that he the said C. D., on the day of , in the year of our Lord , at the parish of , in the county of , [one hundred peaches] ["any plant, root, fruit, or vegetable production"], of the value of [twenty shillings], the property of A. B., then growing in a certain garden ["garden, orchard, pleasure-ground, nursery-ground, hothouse, greenhouse, or conservatory"] of the said A. B. there situate, then unlawfully did destroy and damage, with intent the same then and there unlawfully to steal, take, and carry away, thereby then doing injury unto the said A. B. to the amount of [twenty shillings], against the form of the statute in that case made and provided: I, the said J. P., do therefore adjudge, etc.*

(48) Indictment for stealing fruit, etc., after a previous conviction, s. 36.

*(Commence as ante, form (1).) at , in the county of , was duly convicted before J. P., one of her Majesty's justices of the peace for the said county of , for that he the said C. D. on, etc. [as in the first conviction, to the words] against the form of the statute in such case made and provided: And the said C. D. was, therefore, then adjudged, for his said offence, to forfeit and pay the sum of [twenty pounds], over and above the amount of the injury so done as aforesaid, and the further sum of [ten shillings], being the amount of the said injury; and also to pay the sum of shillings for costs; and, in default of immediate payment of the said sum, to be imprisoned, etc. [as in the conviction]. And the jurors aforesaid, upon their oath aforesaid, do further present, that the said C. D., after he had been so convicted as aforesaid, to wit, on, etc., certain fruit ["plant, root, fruit, or vegetable production"], to wit [ten pounds*

*weight of nectarines*], of the value of [one hundred shillings], the property of *A. B.*, then growing in a certain garden ["garden, orchard, pleasure-ground, nursery-ground, hothouse, greenhouse, or conservatory"] of the said *A. B.*, feloniously did steal, take, and carry away, against the form, etc.

4. Forms.

A commitment or indictment for a second offence in destroying, etc., the fruit, etc., may be readily framed from the above forms.

For that he the said *C. D.*, on, etc., at, etc., unlawfully did steal [or destroy or damage with intent then to steal] certain cultivated roots [or plants] used for the food of man [or beast, or for medicine, or distilling, or dyeing, or for or in the course of a certain manufacture, to wit, ], to wit, [ten mangold-wurzels] of the value of , the property of *A. B.*, then growing in a certain open [or enclosed] land of the said *A. B.* there situate, and not being a garden, orchard, pleasure-ground, or nursery-ground, contrary, etc.

(49) Conviction for stealing, etc., roots or plants, etc., growing elsewhere, s. 37.

(If the conviction be for destroying with intent to steal, use the above form omitting the allegation of value, and adding after the word) a nursery-ground, and thereby then doing injury to the said *A. B.* to the amount of , contrary, etc.

(50) Conviction for destroying roots, etc., with intent to steal.

(Describe the offence as in the last form, adding at the conclusion)—*he, the said C. D. having been previously convicted of a like offence.*

(51) Conviction for stealing, etc., roots or plants, etc., after a previous conviction, s. 37.

(Commence as ante, form (1).) *twenty pounds weight of copper ore* ["the ore of any metal, or any lapis calaminaris, manganese, or mundick, or any wad, black cawke, or black lead, or any coal, or any cannel coal"], the property of *J. N.*, from a certain mine of copper ore ["mine, bed, or vein thereof respectively"] of the said *J. N.*, situate in the parish of , in the county of , feloniously did steal, take, and carry away [or feloniously did sever, with intent thereby then to defraud the said *A. B.* "any proprietor of, or any adventurer in such mine, or any workman or miner employed therein"], against the form, etc.

(52) Indictment for stealing ore, etc., s. 38.

(Commence as ante, form (1).) *at , in the parish of , in the county of , being then employed in and about a certain [copper] mine there situate, called , the property of A. B., feloniously did take [or remove or conceal] fifty pounds weight of [copper] ore, found in the said mine, with intent thereby then to defraud the said A. B. ["any proprietor of, or any adventurer in such mine, or any workman or miner employed therein"], contrary to, etc.*

(53) Indictment against workmen for removing ore to defraud proprietors and others, s. 39.

(Commence as ante, form (1).) *in and upon one J. N., in the peace of God and of our lady the Queen then being, feloniously did make an assault, and him the said J. N. in bodily fear and danger of his life feloniously did put; and the moneys of the said J. N., to the amount of ten pounds, from the person, and against the will of the said J. N., feloniously and violently did steal, take, and carry away, against the form, etc.*

(54) Indictment for robbery, s. 40.

(Commence as ante, form (1).) *one watch, one pocket-book, and one pocket-handkerchief* ["any chattel, money, or valuable security"] of the goods and chattels of *J. N.* from the person of the said *J. N.* feloniously did steal, take, and carry away, against the form, etc.

(55) Indictment for stealing from the person, s. 40.

4. *Forms.*

(56) Indictment for assault with intent to rob, s. 42.

(Commence as *ante*, form (1).) *in and upon one J. N., in the peace of God and of our lady the Queen then being, feloniously did make an assault, with intent the moneys, goods, and chattels of the said J. N. from the person and against the will of the said J. N. feloniously and violently to steal, take, and carry away, against the form, etc.*

(57) Indictment for robbery by a person armed, s. 43.

(Commence as *ante*, form (1).) *being then armed with a certain offensive weapon and instrument, to wit, a bludgeon, in and upon one J. N., in the peace of God and of our lady the Queen then being, feloniously did make an assault, and him the said J. N. in bodily fear and danger of his life did then put, and ten pieces of the current gold coin of the realm, called sovereigns, of the value of ten pounds, and one gold watch of the value of five pounds, of the goods, moneys, and chattels of the said J. N. from the person of the said J. N. then feloniously and violently did steal, take, and carry away, against the form, etc.*

(58) Indictment for robbery with violence, s. 43.

Commence as *ante*, form (1).) *in and upon one J. N., in the peace of God and of our lady the Queen then being, feloniously did make an assault, and him the said J. N. in bodily fear and danger of his life then feloniously did put, and the moneys of the said J. N. to the amount of ten pounds, and one gold watch, of the goods and chattels of the said J. N., from the person and against the will of the said J. N. then feloniously and violently did steal, take, and carry away; and that the said C. D., immediately before he so robbed the said J. N. as aforesaid ["at the time of, or immediately before, or immediately after such robbery"], the said J. N. in and upon the left side of him the said J. N. feloniously did wound ["wound, beat, strike, or use any other personal violence to such person"], against the form, etc.*

An indictment for robbery by two or more persons in company will be the same as the above, except that it should charge that the defendants together robbed the prosecutor; if the other persons be unknown, say, "and certain other persons, to the jurors aforesaid unknown."

(59) Indictment for sending a letter demanding money with menaces, s. 44.

(Commence as *ante*, form (1).) *feloniously did send ["send, deliver, or utter, or directly or indirectly cause to be received"] to one J. N. a certain letter ["any letter or writing"] directed to the said J. N. by the name and description of Mr. J. N., demanding money ["any property, chattel, money, valuable security, or other valuable thing"] from the said J. N. with menaces, and without any reasonable or probable cause, he the said C. D. then well knowing the contents of the said letter, and which said letter is as follows, that is to say: [here set out the letter verbatim], against the form, etc.*

(60) Indictment for demanding money with menaces, s. 45.

Commence as *ante*, form (1).) *with menaces [or by force, or with menaces and by force] did feloniously demand of J. N. the money ["any chattel, money, valuable security, or other valuable thing"] of him the said J. N., with intent the said money from the said J. N. feloniously to steal, take, and carry away, against the form, etc.*

(61) Indictment for sending a letter threatening to accuse, with intent, etc., s. 46.

(Commence as *ante*, form (1).) *feloniously did send ["send, deliver, or utter, or directly or indirectly cause to be received"] to one J. N. a certain letter ["any letter or writing"] directed to the said J. N. by the name and description of Mr. J. N., threatening to accuse him the said J. N. ["accusing or threatening to accuse"] of having attempted and endeavoured to commit the abominable crime of sodomy with the said C. D. [see the words of the section] with a view and intent thereby then to extort and gain money ["any property, chattel, money, valuable security, or other valuable thing"] from the said J. N., he the said C. D. then well knowing the contents of the said letter, and which said letter is as follows, that is to say: [here set out the letter verbatim], against the form, etc.*

(Commence as *ante*, form (1).) *feloniously did threaten one J. N. to accuse* ["accuse or threaten to accuse"] *him the said J. N.* ["either the person to whom such accusation or threat shall be made, or any other person"] *of having attempted and endeavoured to commit the abominable crime of sodomy with the said C. D.* [see the words of sect. 46], *with a view and intent thereby then to extort and gain money* ["any property, chattel, money, valuable security, or other valuable thing"] *from the said J. N., against the form, etc.*

## 4. Forms.

(62) Indictment for threatening to accuse a man of a crime, with intent, etc., s. 47.

(Commence as *ante*, form (1).) *with intent to defraud* [or *injure*] *one J. N., feloniously did by certain unlawful violence* ["or threat of violence to, or restraint of the person of another"] *to the person of the said J. N.* [or *did by accusing or threatening to accuse the said J. N. of treason, etc.*, see the words of the section], *compel* [or *induce*] *the said J. N. to execute* ["or make, accept," etc., see the words of the section] *a certain valuable security, to wit,* , *against the form, etc.*

(63) Indictment for inducing a person by threats to execute deeds, etc., s. 48.

(Commence as *ante*, form (1).) *the church of the parish of* , *in the county of* [or *a certain chapel situate in the parish of* , *in the county of* ], ["any church, chapel, meeting-house, or other place of divine worship"], *feloniously did break and enter, and then in the said church one silver cup of the goods and chattels of the parishioners of the said parish feloniously and sacrilegiously did steal, take, and carry away, against the form, etc.*

(64) Indictment for breaking and entering a church, etc., and stealing therein, s. 50.

If the church be the parish church, add other counts laying the property in the chattel in the churchwardens or in the rector (see 1 *Hale*, 51, 52; 2 *East*, P. C. 681); if a private chapel, lay the property in the owner.

(Commence as *ante*, form (1).) *one silver cup of the goods and chattels of the parishioners* [see the note to the above indictment] *of the parish of* , *in the county of* , *in the church of the said parish there situate, feloniously did steal, take, and carry away; and that the said C. D., so being in the said church as aforesaid, afterwards, and after he had so committed the said felony in the said church as aforesaid, on the day and year aforesaid, feloniously did break out of the said church, against the form, etc.*

(65) Indictment for stealing in a church or chapel and breaking thereof, s. 50.

(Commence as *ante*, form (1).) *about the hour of eleven in the night of the same day, being in the dwelling-house of J. N., situate at the parish of* , *in the county of* , *one silver sugar-basin of the value of three pounds, six silver tablespoons of the value of three pounds, and twelve silver teaspoons of the value of two pounds, of the goods and chattels of one J. O. in the said dwelling-house of the said J. N., then being in the said dwelling-house, feloniously did steal, take, and carry away; and that he the said C. D. being so as aforesaid in the said dwelling-house, and having committed the felony aforesaid, in manner and form aforesaid, afterwards, to wit, on the same day and year aforesaid, about the hour of eleven in the night of the same day, feloniously and burglariously did break out of the said dwelling-house of the said J. N., against the form, etc.*

(66) Indictment for burglary by breaking out of a house, s. 51.

(Commence as *ante*, form (1).) *about the hour of eleven of the clock in the night of the same day, the dwelling-house of J. N., situate at the parish of B., in the county of S., feloniously and burglariously did break and enter; with intent the goods and chattels of one K. O., in the said dwelling-house then being, feloniously and burglariously to steal, take, and carry away; and then in the said dwelling-house one silver sugar-basin of the value of three pounds, and twelve silver teaspoons of the value of two pounds, of the goods and chattels of the said K. O. in the said dwelling-house then being found, feloniously and burglariously did steal, take, and carry away, against the form, etc.*

(67) Indictment for burglary and larceny to the amount of £5, s. 52.



4. *Forms.*

If under this indictment the prosecutor fail in proving the burglary, the prisoner may be convicted of stealing in the dwelling-house to the amount of £5 (see sect. 60); and, if he fail in proving it to have been committed in the dwelling-house of J. N., or that the goods are of the value of £5, the prisoner may be convicted of simple larceny.

(68) Indictment for entering a dwelling-house at night with intent to commit any felony, s. 54.

(Commence as *ante*, form (1).) *about the hour of eleven in the night of the same day, feloniously did enter the dwelling-house of J. N. there situate with intent to commit felony ["any felony"] therein; against the form, etc.*

(69) Indictment for breaking and entering a building within the curtilage, s. 55.

(Commence as *ante*, form (1).) *a certain building of one J. N., situate in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, feloniously did break and enter the said building then being within the curtilage of the dwelling-house of the said J. N. there situate and by the said J. N. then and there occupied therewith, and there being then and there no communication between the said building and the said dwelling-house, either immediate or by means of any covered and enclosed passage leading from one to the other [see sect. 53], and that the said C. D., then and there in the said dwelling-house one silver watch of the goods and chattels of the said J. N. feloniously did steal, take, and carry away; against the form, etc.*

This count should be added to a count for burglary where there is any doubt about the building being a dwelling-house. An indictment for committing a felony in such a building and breaking out of the same may be readily framed from the above.

(70) Indictment for house-breaking, s. 56.

(Commence as *ante*, form (1).) *the dwelling-house of J. N., situate in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, feloniously did break and enter, and two pewter dishes, one dressing-case, and six chairs of the goods and chattels of the said J. N. in the said dwelling-house feloniously did steal, take, and carry away; against the form, etc.*

(71) Indictment for breaking into and stealing in a shop, s. 56.

(Commence as *ante*, form (1).) *the shop of J. N., situate in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, feloniously did break and enter, and twenty yards of muslin of the goods and chattels of the said J. N. in the said shop feloniously did steal, take, and carry away; against the form, etc.*

(72) Indictment for breaking and entering a dwelling-house with intent to commit any felony, s. 57.

(Commence as *ante*, form (1).) *feloniously did break and enter the dwelling-house ["a dwelling-house, church, chapel, meeting-house, or other place of divine worship, or any building within the curtilage, schoolhouse, shop, warehouse, or counting-house"] of J. N. there situate, with intent to commit felony ["any felony"], to wit, feloniously to [steal divers goods and chattels]; against the form, etc.*

(73) Indictment for being found by night armed with intent, s. 58.

(Commence as *ante*, form (1).) *about the hour of eleven in the night of the same day at the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, was unlawfully found armed with a certain dangerous and offensive instrument, that is to say, a crossbar ["any dangerous or offensive weapon or instrument whatsoever"], with intent then to break and enter ["break or enter"] into a certain dwelling-house of J. S. there situate, and the goods and chattels in the said dwelling-house then being feloniously to steal, take, and carry away, against the form, etc.*

(74) Indictment for being found by night in pos-

(Commence as *ante*, form (1).) *about the hour of eleven in the night of the same day, at the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, unlawfully was found, he the said C. D., then and there by night as aforesaid,*

*unlawfully having in his possession, without lawful excuse, certain implements of housebreaking, that is to say, ten picklocks, ten keys, and two crows, against the form, etc.*

## 4. Forms.

session of implements of housebreaking, s. 58.

(Commence as ante, form (1).) *one silver sugar-basin of the value of three pounds and twelve silver teaspoons to the value of four pounds, of the goods and chattels of K. O., in the dwelling-house of J. N., situate in the parish of , in the county of , feloniously did steal, take, and carry away, against the form, etc.*

(75) Indictment for stealing in a dwelling-house to the value of £5, s. 60.

(Commence as ante, form (1).) *one silver basin and one coat of the goods and chattels of J. N. in the dwelling-house of J. N., situate at the parish of , in the county of , feloniously did steal, take, and carry away; one J. L. and M. his wife then, to wit, at the time of the committing of the felony aforesaid being in the said dwelling-house, and therein by the said C. D., by a certain menace and threat then used by the said C. D., then being put in bodily fear, against the form, etc.*

(76) Indictment for stealing in a dwelling-house, some person being put in fear, s. 61.

(Commence as ante, form (1).) *fifty yards of silk of the value of [five pounds], of the goods and chattels of A. B., in a certain factory and building of the said A. B., situate in the parish of , in the county of , feloniously did steal, take, and carry away, whilst the same were laid, placed, and exposed in the said factory and building, during a certain stage, process, and progress of manufacture, against the form, etc. [Add other counts stating the particular process and progress of manufacture in which the goods were when stolen, or otherwise as the case may suggest.]*

(77) Indictment for stealing silk, etc., in process of manufacture, s. 62.

(Commence as ante, form (1).) *twenty pounds weight of indigo ["any goods or merchandise"] of the goods and merchandise of J. N., then being in a certain ship called the 'Rattler' ["vessel, barge, or boat of any description whatsoever"] upon the navigable river Thames ["in any port of entry or discharge or upon any navigable river, or canal, or in any creek belonging to or communicating with any such port, river, or canal"], in the said ship feloniously did steal, take, and carry away; against the form, etc.*

(78) Indictment for stealing from a vessel on a navigable river, s. 63.

(Commence as ante, form (1).) *twenty pounds weight of indigo ["any goods or merchandise"] of the goods and merchandise of J. N. then being in and upon a certain dock ["dock wharf or quay"] adjacent to a certain navigable river called the Thames ["adjacent to any port," etc.; see the last precedent], from the said dock feloniously did steal, take, and carry away, against the form, etc.*

(79) Indictment for stealing from a dock, etc., s. 63.

(Commence as ante, form (1), omitting the words "C. D.") *a certain ship ["any ship or vessel"], the property of a person or persons to the jurors aforesaid unknown, was stranded ["in distress or wrecked, stranded or cast on shore"], and that J. S., on the day and year aforesaid, ten pieces of oak plank ["any part of any ship, etc."], being parts of the said ship [or twenty pounds weight of cotton] ["any goods, merchandise, or articles of any kind"], of the goods and merchandise of a person or persons to the jurors aforesaid unknown, belonging to the said ship so then stranded as aforesaid, feloniously did plunder, steal, take, and carry away, against the form, etc.*

(80) Indictment for stealing from a stranded vessel, etc., s. 64.

A second count may be added, stating the ship to have been in distress, a third count stating the ship to have been wrecked, and a fourth count stating the ship to have been cast on shore. If the name of the ship be known it should be stated in the indictment; and, if the name of the owner be known, the ship should be described as his property.

## 4. Forms.

(81) Conviction for having possession of shipwrecked goods, s. 65.

*For that he the said C. D., on the \_\_\_\_\_ day of \_\_\_\_\_, at the parish of \_\_\_\_\_, in the said county of \_\_\_\_\_, unlawfully had in his possession [or on his premises and with his knowledge], and the same was there found [twenty pounds weight of indigo] of the value of [fifty shillings], of the goods, merchandise, and articles belonging to a certain ship then lately before in distress [or wrecked or stranded], and cast on shore on the seacoast in the county of \_\_\_\_\_ aforesaid, the property of some person or persons unknown, and which said goods had been by some person or persons unknown feloniously plundered and stolen [or unlawfully taken] whilst the said ship was so stranded and cast ashore as aforesaid; and that upon the said C. D. being taken [or summoned] before me the said justice now here, the said C. D. doth not now satisfy me the said justice that he came lawfully by the said goods and merchandise, but hath altogether failed in so doing, contrary, etc.*

(82) Conviction for offering shipwrecked goods for sale, s. 66.

*For that he the said C. D., on \_\_\_\_\_, at \_\_\_\_\_, unlawfully did offer [or expose] for sale [twenty pounds weight of indigo] of the value of [fifty shillings] which had [or were and are reasonably suspected to have] been theretofore unlawfully taken from a certain ship [or vessel], then lately before in distress [or wrecked or stranded or cast on shore] there [or at \_\_\_\_\_], and that the said C. D., although duly summoned by me as such justice as aforesaid, hath not appeared before me or satisfied me that he came lawfully by the said [goods] or, that the said C. D. now appeareth before me, having been duly summoned for that purpose, but doth not show or satisfy me the said justice that he came lawfully by the said [goods], and altogether fails in doing so, contrary, etc.*

\_\_\_\_\_ } *To the constable of the parish of \_\_\_\_\_, in the said [county] to wit.* of \_\_\_\_\_.

(83) Order that the shipwrecked goods be delivered up to the owner, ss. 65, 66.

*Whereas C. D. of \_\_\_\_\_, was this day duly convicted before me the undersigned, one of her Majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, for that [etc., as in either of the above forms]. I do, therefore, pursuant to the statute 24 & 25 Vict. c. 96, s. 65 or [66], order and direct you the said constable forthwith to deliver the said goods above-mentioned unto [E. F., for the use of] G. H., who appears to me to be the rightful owner thereof [adding, if the order is under sect. 66, upon payment of the sum of \_\_\_\_\_, as a reasonable reward (which I have duly ascertained) to J. K., to whom the said goods were offered by the said C. D., and who seized the same].*

*Given under my hand and seal this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.*

(84) Indictment for larceny as a servant, s. 67.

*(Commence as ante, form (1).) was clerk ["clerk or servant"] to J. N. [or was employed by J. N. for the purpose and in the capacity of a clerk to him the said J. N.], and that the said C. D. afterwards and whilst he was such clerk to the said J. N. as aforesaid [or was so employed by the said J. N. as aforesaid], to wit, on the day and year aforesaid, certain money to the amount of ten pounds, ten yards of linen cloth, and one bill of exchange for the payment of ten pounds ["any chattel, money, or valuable security"] of and belonging to the said J. N. his master [or employer], [or in the possession and power ("possession or power") of the said J. N. his master (or employer) then being], feloniously did steal, take, and carry away, against the form, etc.*

(85) Indictment for embezzlement, s. 68.

*(Commence as ante, form (1).) being then employed as clerk ["clerk or servant or any person employed for that purpose, or in the capacity of a clerk or servant"] to J. N., did then, and while he was so employed as aforesaid, receive and take into his possession certain money ["chattel, money, or valuable security"] to a large amount, to wit, to the amount of ten pounds for and in the name and on the account of the said J. N. his master [master or*

employer], and the said money then fraudulently and feloniously did embezzle; and so the jurors aforesaid upon their oath aforesaid, do say that the said C. D. in manner and form aforesaid, the said money, the property of the said J. N. his master, from the said J. N. feloniously did steal, take, and carry away, against the form, etc.

4. Forms.

And the jurors aforesaid upon their oath aforesaid, do further present that the said C. D. afterwards, and within six months from the time of the committing of the said offence in the first count of this indictment charged and stated, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, being then employed as clerk to the said J. N., did then and whilst he was so employed as aforesaid, receive and take into his possession certain other money to a large amount, to wit, to the amount of ten pounds for and in the name and on the account of the said J. N., his said master, and the said last-mentioned money then and within the said six months fraudulently and feloniously did embezzle; and so, etc. [as in the above indictment, to the end].

(86) Count for other acts of embezzlement within six months, s. 71.

(Commence as ante, form (1).) *being then employed in the public service of her Majesty* [or "being a constable or other person employed in the police," etc.], one \_\_\_\_\_ ["any chattel, money, or valuable security"] *belonging to her Majesty* ["belonging to or in the possession or power of her Majesty, or entrusted to or received or taken into possession by him by virtue of his employment"], *did steal, take, and carry away, against the form, etc.*

(87) Indictment for stealing against a person in the public service, s. 69.

(Commence as ante, form (1).) *being employed in the public service of her Majesty* [or "being a constable or other person employed in the police of any county," etc.] *and being entrusted, by virtue of such employment, with the receipt, custody, management, and control of a certain valuable security, to wit,* \_\_\_\_\_ ["any chattel, money, or valuable security"], *did then, whilst he was so employed as aforesaid, receive and take into his possession the said valuable security, and the said valuable security then fraudulently and feloniously did embezzle* [or *did then fraudulently and feloniously apply or dispose of the same for his own use and benefit and not for the public service*]; and so the jurors aforesaid upon their oath aforesaid do say that C. D., in manner and form aforesaid, the said valuable security, the property of her Majesty, from her Majesty did steal, take, and carry away, against the form, etc.

(88) Indictment for embezzlement by a person in the public service, etc., s. 70.

(Commence as ante, form (1).) *being an officer and servant of the Governor and Company of the Bank of England, and being entrusted with a certain bond, to wit,* \_\_\_\_\_ ["any bond, deed, note, bill, dividend warrant, or warrant for payment of any annuity or interest, or money, or with any security, money, or other effects"], *which said bond was then belonging to the said Governor and Company* [or *having a certain bond, to wit,* \_\_\_\_\_, *the property of* \_\_\_\_\_, *lodged or deposited with the said Governor and Company, or with him the said C. D. as such officer and servant of the said Governor and Company*] *did then and whilst he was such officer and servant of the said Governor and Company, and whilst he was so entrusted as aforesaid with the said bond, so as aforesaid belonging to the said Governor and Company, feloniously secrete, embezzle, and run away with such bond so as aforesaid belonging to the said Governor and Company, against the form, etc.*

(89) Indictment for embezzlement by an officer of the Bank of England, s. 73

If the indictment be for stealing a chattel, it may be in the common form for larceny, see ante, 305; and, in case of stealing a fixture, the indictment may be in the same form as if the offender were not a tenant or lodger; and the property may be laid either in the owner or person letting to hire. If the indictment be for stealing a fixture, use form (36), and describe the dwelling-house as that of the landlord, as in burglary.

(90) Indictment for larceny by tenants or lodgers, s. 74.

## 4. Forms.

(91) Indictment against a banker, etc., for a fraudulent conversion of money entrusted to him, s. 75.

(Commence as *ante*, form (1), substituting A. B. for C. D.) *did entrust C. D. as a banker* ["banker, merchant, broker, attorney, or other agent"] *with a certain large sum of money* ["money or security for the payment of money"], *to wit, the sum of one hundred pounds, with a direction to the said C. D. in writing to pay the said sum of money* ["such money or security or any part thereof, or the proceeds or any part of the proceeds of such security"] *to a certain person specified in the said direction* ["for any purpose or to any person specified in such direction"]; *and that the said C. D., as such banker as aforesaid, afterwards, to wit, on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, in the year of our Lord* \_\_\_\_\_ *, in violation of good faith and contrary to the terms of the said direction, unlawfully did convert to his own use and benefit* ["own use or benefit, or the use or benefit of any person other than the person by whom he shall have been so entrusted"] *the said sum of money* ["such money, security, or proceeds, or any part thereof respectively"], *so to him entrusted as aforesaid, against the form, etc.*

In case of a security for money, the indictment must allege a written direction as to the application of the proceeds.

A count should be added stating particularly the purpose to which the money was to be applied, and the person to whom it was to be paid.

(92) Indictment against a banker or agent, for selling or converting goods or valuable securities entrusted to him for safe keeping, or for a special purpose, not in writing, s. 75.

(Commence as above.) *did entrust to C. D. as a banker, for safe custody* [or "*for a certain special purpose, to wit, for the purpose of*""] (*he the said C. D. being a banker*) ["banker, merchant, broker, attorney, or other agent"] *a certain* [bill of exchange], *the property of the said C. D., drawn by etc., on etc., for the payment of the sum of* [one hundred pounds] ["any chattel or valuable security, or any power of attorney for the sale or transfer of any share or interest in any public stock or fund, whether of this kingdom, or of Great Britain, or of Ireland, or of any foreign state, or in any fund of any body corporate, company, or society"], *without any authority to sell, negotiate, transfer, or pledge the same; and that the said C. D., then being such banker as aforesaid, and being so entrusted as aforesaid, in violation of good faith, and contrary to the object and purpose for which the said* [bill of exchange] *was so entrusted to him as aforesaid, and whilst so entrusted as aforesaid, unlawfully did negotiate, transfer, and convert to his own use and benefit* ["sell, negotiate, transfer, pledge, or in any manner convert to his own use or benefit"] *the said* [bill of exchange] ["such chattel or security, or the proceeds of the same, or of any part thereof, or the share or interest in the stock or fund to which such power of attorney shall relate or any part thereof"]; *against the form, etc.* [Add other counts, as the case may suggest.]

Indictments against bankers, etc., under sects. 76 and 77 for fraudulently selling any property may readily be framed from the above, omitting the special allegations as to safe custody, etc.

(93) Indictment against a factor for pledging goods, s. 78.

(Commence as above.) *A. B. did entrust to C. D. (he the said C. D. then being a factor and agent)* [one hundred bales of cotton], *of the value of* [one thousand pounds], *for the purpose of selling the same* ["entrusted for the purpose of sale or otherwise with the possession of any goods, or of any document of title to goods, see sect. 1], *and that the said C. D. afterwards, contrary to and without the authority of the said A. B., for his own benefit, and in violation of good faith, unlawfully did deposit the said cotton as and by way of a pledge, lien, and security, for a sum of money, to wit* [one hundred pounds] ["money or negotiable instrument"], *by the said C. D. then* [or "*before then,*" or, "*then intended to be*"] *borrowed and received of and from the said E. F., against the form, etc.*

It is also an offence under the present section of the Act to "accept any advance of any money or valuable security on the faith of any contract or agreement to consign, deposit, etc." Also clerks or other persons wilfully assisting in such offences are liable under this section. The indictments in these cases may be framed from the above.

*Middlesex,* } *The jurors for our lady the Queen upon their oaths present to wit, } that before and at the time of the committing of the offences hereinafter mentioned, to wit, on the first day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, C. D. was a trustee of certain property, to wit, five thousand pounds three per centum consolidated bank annuities, wholly [or partially] for the benefit of J. N. [or for a certain public or charitable purpose], that is to say [stating the purpose], and that he the said C. D., so being such trustee as aforesaid, on the day and year aforesaid, unlawfully and wilfully did convert and appropriate the said property to his own use ["convert or appropriate the same or any part thereof to or for his own use or purposes, or otherwise dispose of or destroy such property or any part thereof"] with intent thereby then to defraud; against the form, etc.*

[Add counts alleging that the defendant disposed of (showing the mode of disposition) or destroyed the property, if necessary.]

## 4. Forms.

(94) Indictment against a trustee for fraudulent conversion, s. 80.

*\_\_\_\_\_ } The jurors for our lady the Queen upon their oath present that to wit, } before and at the time of the committing of the offences hereinafter mentioned, C. D. was a director [director or manager or public officer] of a certain public company ["any body corporate or public company"] called the \_\_\_\_\_ Company, and that he the said C. D., so being such director as aforesaid, on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, did unlawfully and fraudulently take and apply for his own use and benefit ["for his own use or benefit, or for any use or purposes other than the use or purposes of such body corporate or public company"], certain money, to wit, one thousand pounds [any property, see 24 & 25 Vict. c. 96, s. 1], of and belonging to the said Company; against the form, etc.*

(95) Indictment against a director for fraudulent conversion of the company's money, s. 81.

(Commence as ante, form (1).) *then being a director [or "public officer or manager"] of a certain body corporate [or public company] called \_\_\_\_\_, unlawfully did as such director receive and possess himself of certain of the property of the said body corporate [or company], otherwise than in payment of a just debt or demand; to wit, the sum of \_\_\_\_\_ [or \_\_\_\_\_], and unlawfully, with intent to defraud, did omit to make [or to cause and direct to be made] a full and true entry of the said sum [or \_\_\_\_\_], in the books and accounts of the said body corporate [or company]; against the form, etc.*

(96) Indictment against directors for keeping fraudulent accounts, s. 82.

(Commence as ante, form (1).) *then being a director [or manager or public officer or member] of a certain body corporate [or public company] called \_\_\_\_\_, unlawfully, with intent to defraud, did destroy [or alter or mutilate or falsify] a certain book [or paper or writing or valuable security] [or make or concur in the making of a certain false entry, or omit or concur in omitting a certain material particular in a certain book of account or document], to wit, \_\_\_\_\_, belonging to the said body corporate [or company]; against the form, etc.*

(97) Indictment against a director for destroying books, etc., s. 83

(Commence as ante, form (1).) *did unlawfully circulate and publish ["make, circulate, or publish, or concur in making, circulating, or publishing"] a certain written statement and account ["any written statement or account"], which said written statement was false in certain material particulars, that is to say in this, to wit, that it was therein falsely stated that [state the particulars] he the said C. D., then well knowing the said written statement and account to be false in the several particulars aforesaid, with intent thereby then to deceive and defraud J. N., then being a shareholder of the said public company [with intent to deceive and defraud any member, shareholder, or creditor of such body corporate or public company, or with intent to induce any person to become a shareholder or partner therein, or to intrust or advance any money or property to such body corporate or public*

(98) Indictment against a director for publishing fraudulent statements, s. 84.

4. *Forms.* company, or to enter into any security for the benefit thereof]; against the form, etc.

(99) Indictment for a cheat at common law in selling by false scales.

— } The jurors for our lady the Queen upon their oath present that to wit. } C. D., on the first day of in the year of our Lord, and from thence until the taking of this inquisition, did use and exercise the trade and business of a [grocer]; and during that time did deal in the buying and selling by weight of [teas, sugar, spices], and divers other goods, wares, and merchandises, and that the said C. D. being a person of a wicked and depraved mind, and contriving and fraudulently intending to cheat and defraud the subjects of our said lady the Queen, whilst he was and continued to be a [grocer] as aforesaid, to wit, on the first day of August in the year aforesaid, and on divers other days and times between that day and the day of the taking of this inquisition, knowingly, wilfully, falsely, fraudulently, and deceitfully did keep in a certain shop, wherein he the said C. D. did so as aforesaid carry on his said trade, a certain pair of false scales for the weighing of goods, wares, and merchandises by him sold in the way of his said trade; and which said scales were then by artful and deceitful means and contrivances so made and constructed as to cause the goods, wares, and merchandises weighed and sold thereby to appear of greater weight, to wit, of a greater weight by two ounces in every quantity of goods weighed thereby than the real and true weight thereof; and that the said C. D. well knowing the said scales to be false as aforesaid did then, to wit, on the several days and times aforesaid, wilfully, falsely, fraudulently, and deceitfully sell and utter to divers subjects of our said lady the Queen, divers goods, wares, and merchandises in the way of his said trade weighed in and sold by the said false scales, and which goods, wares, and merchandises were very much deficient and short of the weight at and for which the same were so sold by the said C. D. as aforesaid, to wit, by the weight of two ounces, to the great damage and deceit of her Majesty's said subjects, to the evil example of all others in the like case offending, and against the peace of our said lady the Queen, her crown and dignity.

(100) Indictment for false pretences, s. 88.

(Commence as ante, form (1).) unlawfully, knowingly, and designedly did falsely pretend to one J. N. [that he the said C. D. then was the servant of one K. O., of St. Paul's Churchyard, in the city of London, tailor, the said K. O. then and long before being well known to the said J. N. and a customer of the said J. N. in his business and way of trade as a woollen-draper, and that the said C. D. was then sent by the said K. O. to the said J. N. for five yards of superfine woollen cloth], by means of which said false pretences the said C. D. did then unlawfully obtain from the said J. N. five yards of superfine woollen cloth ["any chattel, money, or valuable security"], with intent thereby then to defraud, whereas in truth and in fact [the said C. D. was not then the servant of the said K. O., and whereas in truth and in fact, the said C. D. was not then or at any other time sent by the said K. O. to the said J. N. for the said cloth or for any cloth whatsoever] to the great damage and deception of the said J. N., to the evil example of all others in the like case offending, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity.

(101) Indictment for inducing another to accept a bill of exchange by means of false pretences, s. 90.

(Commence as ante, form (1).) unlawfully, knowingly, and designedly did falsely pretend to one J. N. that [state the false pretence used as in form (100)] by means of which said false pretence the said C. D. did then unlawfully and fraudulently induce the said J. N. to accept a certain bill of exchange, that is to say, a bill of exchange for one hundred pounds, with intent thereby then to defraud and injure the said J. N., whereas in truth and in fact [here negative the false pretences as in form (100)], to the great damage and deception of the said J. N., to the evil example of all others offending, against the form, etc., and against the peace, etc.

(After the conclusion of the indictment against the principal, see form (1), continue it in the same paragraph, thus :)—*and the jurors aforesaid, upon their oath aforesaid, do further present that C. D. [or E. F.] afterwards, to wit, on the first day of \_\_\_\_\_ in the year aforesaid,\* the goods and chattels aforesaid ["chattels, money, or valuable security, or goods whatsoever"], so as aforesaid feloniously stolen, taken, and carried away, feloniously did receive and have, he the said C. D. [or E. F.] then well knowing the said goods and chattels to have been feloniously stolen, taken, and carried away, against the form, etc.*

## 4. Forms.

(102) Indictment against the principal and receiver jointly, s. 91.

— } *The jurors for our lady the Queen upon their oath present that to wit, } heretofore, to wit, [at the general sessions of the delivery of the gaol of \_\_\_\_\_, at \_\_\_\_\_, so continuing the caption of the former indictment], it was presented that one C. D. [etc., continuing the indictment to the end, reciting it, however, in the past, and not in the present tense], upon which said indictment the said C. D., at the session of gaol delivery aforesaid, was duly convicted of the felony and larceny aforesaid; And the jurors aforesaid, upon their oath aforesaid, do further present that E. F., after the committing of the said larceny and felony as aforesaid, to wit, on the first day of \_\_\_\_\_ in the year last aforesaid [etc., as in the last precedent, from the asterisk.]*

(103) Indictment against the receiver as accessory, the principal having been convicted, s. 91.

(Commence as ante, form (1).) *one silver tankard ["chattel, money, valuable security, or other property whatsoever"] of the goods and chattels of one J. N. before then feloniously stolen, taken, and carried away, feloniously did receive and have, he the said C. D. then well knowing the said goods and chattels to have been feloniously stolen, taken, and carried away, against the form, etc.*

(104) Indictment for receiving stolen goods, as for a substantive felony.

(Commence as ante, form (1).) *one silver tankard ["any chattel, money, valuable security, or other property whatsoever"] of the goods and chattels of J. N. then lately before unlawfully, knowingly, and designedly obtained ["stolen, taken, obtained, converted, or disposed of"] from the said J. N. by false pretences, unlawfully did receive and have, he the said C. D. then well knowing the said goods and chattels to have been unlawfully, knowingly, and designedly obtained from the said J. N. by false pretences, against the form, etc.*

(105) Indictment for receiving property obtained by false pretences, s. 95.

*For that he the said C. D., on the \_\_\_\_\_ day of \_\_\_\_\_, at the parish of \_\_\_\_\_, unlawfully did receive one oak-tree [or as the case may be], of the value of \_\_\_\_\_, the property of J. N. the complainant, then lately before unlawfully stolen by one E. F. from certain land of the said J. N., on which the same was then and there growing, he the said C. D. then well knowing the said tree to have been unlawfully come by, contrary, etc.*

(106) Conviction for receiving property, where the thief is liable to summary conviction for a first or second offence, s. 97.

*For that E. F., on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, unlawfully did steal one oak-tree [or as the case may be], of the value of \_\_\_\_\_, the property of J. N., then growing on certain land of the said J. N., and that he the said C. D. unlawfully was then and there present, aiding and abetting the said E. F. to do and commit the said offence, contrary, etc.*

(107) Conviction for aiding and abetting in the commission of an offence punishable on summary conviction, s. 99.

(Proceed as above as to the principal offence, and then proceed as follows :)—*And that he the said C. D., before the said offence was committed as aforesaid, to wit, on the \_\_\_\_\_ day of \_\_\_\_\_, aforesaid, at the parish of \_\_\_\_\_, aforesaid, unlawfully did counsel and procure the said E. F. to do and commit the said offence, contrary to, etc.*

(108) Conviction for counselling and procuring, etc., s. 99.



*Leet.*

(109) Indictment for taking a reward for the recovery of stolen goods, s. 101.

(Commence as ante, form (1).) *feloniously, unlawfully, and corruptly did take and receive from one J. N. certain money and reward, to wit, the sum of five pounds of the moneys of the said J. N., under pretence ["under pretence, or upon any account"] of helping the said J. N. to certain goods and chattels ["chattels, money, or valuable security"] of him the said J. N. before then feloniously stolen, taken, and carried away ["by any felony or misdemeanour stolen, taken, obtained, extorted, embezzled, converted, or disposed of"], the said C. D. not having caused the person by whom the said goods and chattels were so stolen, taken, and carried away as aforesaid, to be apprehended and brought to trial for the same, and not having used all due diligence to cause such person to be so apprehended and brought to trial, against the form, etc.*

(110) Summary conviction for larceny under the 18 & 19 Vict. c. 126 (a).

Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, to wit, } the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the said [county], A. B., being charged before us the undersigned \_\_\_\_\_ of her Majesty's justices of the peace for the said [county], and consenting to our deciding upon the charge summarily, is convicted before us, for that [he the said A. B., etc., stating the offence, and the time and place when and where committed]; and we adjudge the said A. B. for his said offence to be imprisoned in the [house of correction] at \_\_\_\_\_ in the said [county], [and there kept to hard labour] for the space of \_\_\_\_\_

Given under our hands and seals the day and year first above mentioned, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L.S.)  
H. M. (L.S.)

(111) Certificate of dismissal (a).

We, \_\_\_\_\_ of her Majesty's justices of the peace for the day of \_\_\_\_\_, [county] of \_\_\_\_\_, certify, That on the \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the said [county], A. B. being charged before us, and consenting to our deciding upon the charge summarily, for that [he the said A. B., stating the offence charged, and the time and place when and where alleged to be committed], we did, having summarily adjudicated thereon, dismiss the said charge.

Given under our hands and seals, this \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ in the [county] aforesaid.

J. S. (L.S.)  
H. M. (L.S.)

(112) Conviction upon a plea of guilty (a).

Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, in \_\_\_\_\_, to wit, } the year of our Lord \_\_\_\_\_, at \_\_\_\_\_ in the said [county], A. B., being charged before us, the undersigned \_\_\_\_\_ of her Majesty's justices of the peace for the said [county], for that [he the said A. B., etc., stating the offence, and the time and place when and where committed], and pleading guilty to such charge, is thereupon convicted before us of the said offence; and we adjudge the said A. B. for his said offence to be imprisoned in the [house of correction] at \_\_\_\_\_ in the said [county], [and there kept to hard labour] for the space of \_\_\_\_\_

Given under our hands and seals, the day and year first above mentioned, at \_\_\_\_\_ in the [county] aforesaid.

J. S. (L.S.)  
H. M. (L.S.)

**Leet.**

Meaning of the word.

LEET (*leth, læthe, lathe*) is of Saxon original, and seemeth to be no other than the Court of the *lathe*; as the County Court is the court of the county. For, in ancient times, the counties were subdivided into

(a) These are the forms (A.), (B.), and (C.) given in the schedule to the Act.

lathes, rapes, wapentakes, hundreds, and the like; and the sheriff, twice a year, performed his *tourn* or perambulation, for the execution of justice throughout the county. Afterwards this power of holding courts was granted to divers great men, within certain districts, and from thence these courts, holden within particular parts of the county, have descended unto us, without variation, under the name of the *leet*, *leth*, or *lathe* courts.

The *Court leet* is a court of record, having the same jurisdiction within some particular precinct which the sheriff's *torn* hath in the county. (2 *Hawk.* c. 11, s. 1.) Leet, what.

For the leet or view of frankpledge was by the King (for the ease of the people) divided and derived from the *torn*, who did grant to the lords to have the view of the tenants and resiants within their manors, so as the tenants and resiants should have the same justice that they had before in the *torn*, done unto them at their own doors, without any charge or loss of time. (2 *Inst.* 71.) Leet derived from the torn.

The institution hereof for the keeping of the King's peace was that every freeman at his age of twelve years (except peers, clergymen, and tenants in ancient demesne (2 *Hawk.* c. 10, s. 11)) should in the leet, if he were in any, or in the *torn*, if he were not in any leet, take the oath of allegiance (*a*) to the King; and that pledges or sureties should be found for his truth to the King and to all his people, or else to be kept in prison. This frankpledge consisted most commonly of ten households, which the Saxons called *theothung*; in the north parts they call them *tenmentale*; in other places of England, *tithing*; whereof the masters of the nine families, who were bound, were of the Saxons called *freoborg*, which in some places is to this day called *freeborrow*, that is, free surety, or frankpledge; and the master of the tenth household was called *theothungmon*, to this day in the west called *tithingman*, and *tithenheofod*, and *freoborher*, that is, *capitalis plegius*, chief pledge; and these ten masters of families were bound one for another's family, that each man of their several families should stand to the law, or, if he were not forthcoming, that they should answer for the injury or offence by him committed. And the precinct of this frankpledge was called *decennia*, because it consisted most commonly of ten households; and every man of those several households, for whom the pledge or surety was taken, was called *decennarius*; which names are continued as shadows of antiquity to this day. (2 *Inst.* 73.) Frankpledge

And by the due execution of this law, such peace was universally holden within this realm, as no injuries, homicides, robberies, thefts, riots, tumults, or other offences were committed; so that a man with a white wand might safely have ridden, before the Conquest, with much money about him, without any weapon, throughout England. (*Id.*)

Such a system of jurisprudence, however, has long since ceased to be practicable.

But no person is obliged to appear at any leet within the precincts whereof he doth not reside. (2 *Hawk.* c. 10, s. 12.) Who to attend a leet.

But though every one must be within some leet, none can be of two leets; and, it seems, he whose house stands in two leets is said to be commorant [resident] in that wherein his bed stands. (*Wood's Inst.* b. 4, c. 1, s. 16; *R. v. Routledge*, 2 *Dougl.* 537.)

An alien cannot be summoned to attend the leet. (*Palm.* 14.)

He that claims a leet by charter must hold it on the days prescribed by the charter; he that claims it by prescription, may claim to hold it Leet, when to be holden.

(*a*) A *mandamus* does not lie to compel a Court leet to be held for the taking of such oath. (*R. v. Maidstone*, 6 *D.* & *R.* 334.)

*Leet.*

once or twice every year, at any such days as shall, upon reasonable warning, be appointed, if the usage hath been so that it hath been kept at uncertain times; or else it ought to be kept at such certain days and times as by prescription hath been certainly used. (2 *Inst.* 72; *R. v. Gilbert*, 12 *Mod.* 4; 1 *Salk.* 200, *S.C.*)

## Adjournment.

A court leet holden on the 28th of *April* was adjourned after the jury had been sworn in till the 15th of *December*, which day was given them to make their presentments:—Held, that an adjournment of such duration (which was admitted to be according to the custom of the manor) was not necessarily unreasonable. (*Wilcock v. Windsor and others*, 3 *B. & Adol.* 43.)

## Offences within the leet not inquirable in the torn.

If a nuisance, done within the jurisdiction of the leet, be not presented in the leet, the sheriff, in his torn, cannot inquire of it; for that which is within the precinct of the leet is exempt from the torn, otherwise there might be a double charge; but in that case a writ may be directed to the sheriff, to inquire thereof. (4 *Inst.* 261.)

## Steward may commit for an affray.

It seems that a Court leet is so far intrusted with the keeping of the peace within its own precinct, that the steward of it may by recognizance bind any person to the peace who shall make an affray in his presence, sitting the Court, or may commit him to ward, either for want of sureties or by way of punishment, without demanding any sureties of him, in which case he may afterwards impose a fine according to his discretion. (2 *Hawk.* c. 1, s. 15.)

## What felonies are cognizable in the leet.

The leet hath power to receive indictments of felonies at the common law, but not of felonies by Act of Parliament, unless specially limited thereto. (2 *Hale*, 71.)

## Other public offences.

Furthermore, this Court hath cognizance of a great number of offences, both by the common law and by statute; as, for instance, tipping in ale-houses, assaults whereby bloodshed ensueth, common barrators, bawdy-houses, defects in bridges and highways, destroyers of ancient boundaries, bakers, brewers, butchers, curriers, decinors or suitors not appearing in the leet, estrays, waifs, and treasure trove, eaves-droppers, forestallers, regrators, ingrossers, destroyers of game, gamesters, hedge-breakers, neglectors of hue and cry, higglers, inn-holders, millers, night-walkers, common nuisances, want of pillory and stocks and common pounds, rescous, scolds, shoemakers, searchers of leather, stoned horses of two years old put on the common, victuallers, constables neglecting watch and ward, weights and measures, and many other things by particular statutes. (*Wood's Inst.* b. 4, c. 1, s. 16; 1 *Saund.* 135. And see *Toml. Law Dict. by Grainger*, tit. "Court Leet.")

## Private offences.

But a man cannot be presented in the leet for surcharging the common or for digging in the common, because this concerns the private not the public interest, and belongs rather to the Court baron to inquire of it. (*Wood's Inst.* b. 4, c. 1.)

## Within what time offences are cognizable.

Also no offence is cognizable in the leet unless it arose since the holding of the last Court. (2 *Hawk.* c. 10, s. 50; *Davidson v. Moscrop*, 2 *East*, 56.)

## Choice of constables, etc., in the leet.

Before the recent Act of 5 & 6 Vict. c. 109, constables, of common right, were to be chosen and sworn in the leet or torn. (2 *Hawk.* c. 10, s. 37.) And the steward might fine a man for refusing to take the oath of constable (*Fletcher v. Ingram*, 1 *Ld. Raym.* 69); or the party might be indicted. (See tit. "Constable," *Vol. I.*) But now, by the 21st sect. of that Act, no petty constable, headborough, borsholder, tithingman, or peace officer of the like description, under any name of office, shall be appointed for any parish, township, or vill within the limits of that Act, except for the performance of duties unconnected with

the preservation of the peace or with the execution of that Act, at any Court leet or torn, or otherwise than under the provisions of that Act, or under the provisions of the 2 & 3 Vict. c. 93. (As to district and county constables, etc., see the enactment and law, tit. "*Constable*," Vol. I.)

*Leet.*

The leet seems not to be within the equity of the statute of 1 Rich. 3, which required that the jurors in the torn should have 20s. a year freehold, or 2fs. 8d. copyhold or customary; for it is said that any person happening to be present at the leet, or to be riding by the place where it is holden, may, for the want of jurors, be compelled by the steward to be sworn, whether he be resident within the leet or not; by which it seems to be implied that any person whatsoever is capable of being put upon the jury in a Court leet. (*Com. Dig. Leet, G. 1; 2 Hawk. c. 10, s. 68.*)

Jurors.

A custom for the steward of a Court leet to nominate certain persons to the bailiff to be summoned on the jury is good. (*R. v. Joliffe, 2 B. & C. 54; 3 D. & R. 240.* See tit. "*Jurors*," ante, p. 71.)

A party may be fined for obstructing the jury in the execution of their duty. (*And. 49.*)

A *mandamus* does not lie to summon specific jurors upon a Court leet. (*R. v. Bankes, 1 W. Bl. 452.*)

As to the power of the jurors to enter shops, etc., to examine weights, etc., see tit. "*Weights and Measures*," Vol. V.

Power of to examine weights, etc.

A custom for the jurors of a Court leet holden for a borough and manor to present persons to be admitted burgesses of the borough, and for the persons so presented to be admitted and sworn in burgesses, is a lawful custom. (*R. v. Duke of Beaufort, 2 Nev. & M. 815; 5 B. & Adol. 442, S. C.*)

Custom to present persons to be admitted as burgesses.

Indictments in the leet ought to be by roll indented, one to remain with the indictors, and the other with the steward, to prevent embezzling. (*2 Hawk. c. 10, s. 69.*)

Indictments to be indented.

Although the leet may receive indictments of felony, yet it cannot hear and determine them, but must send them to the gaol delivery, there to be heard and determined, if the offenders be in custody, or remove them by *certiorari* into the Queen's Bench, that process may be made upon them to outlawry. (*2 Hale, 71.*)

Indictments of felonies, how to be certified.

It seems to be agreed that a presentment in the leet of any offence within the jurisdiction of the Court, being neither capital nor concerning any freehold, subjects the party to a *fine* or *amerciament* without any further proceeding, and admits of no traverse to the truth of it; but if it touch the party's freehold, it may be removed into the Queen's Bench and there traversed. (*1 Hawk. c. 76, ss. 72, 82; 2 Hawk. c. 10, s. 76.*)

Traverse.

A *fine* is a pecuniary punishment, assessed by the steward, for an offence or contempt committed in Court, or by public officers out of Court, in administration of their offices. A fine is always assessed by the steward, and is not to be affeered, though sometimes it is called an *amerciament*; and the lord by a special warrant to the bailiff may distrain, or he may have an action of debt for a fine imposed, but he cannot imprison. And this is the only Court that can fine and not imprison. (*Wood's Inst. b. 4, c. 1; 2 Hale, 61.*)

Fine.

An *amerciament* is a pecuniary punishment, assessed by the homage or jury, for offences committed out of Court by private persons, to be mitigated by affeerers (from *affeurer*, to tax), who are to affirm the reasonableness thereof upon their oaths, where no express penalty is inflicted by statute; and for this also, the lord may have an action of debt, or may distrain of common right, and impound the distress, or sell it at his pleasure, but cannot imprison for it. (*Wood's Inst. b. 4, c. 1, s. 16.*)

Amerciament.

*Libel.*

The Court leet can only amerce for public nuisances, and not for any private injuries. (*R. v. Dickenson*, 1 *Saund.* 135; *Sir T. Raym* 250.)

Amerciament,  
how recovered.

And upon presentment of a nuisance, the steward may either amerce the person, and order him also to remove it by such a day, under pain of forfeiting a certain sum; or he may order him to remove it under such a pain without amercing him at all. And on presentment at another Court that he hath not removed such nuisance (having had notice thereof), the pain may be recovered by distress or action of debt, without any further proceeding. (2 *Hawk.* c. 10, s. 32.)

Bye-law.

It seemeth that, of common right, any Court leet, with the assent of the tenants, may make bye-laws under certain penalties, in relation to matters properly within the cognizance of such Court, as the reparation of the highways, and the like. And also a Court baron, by custom, may make bye-laws for the well-regulating of commons, and such like private matters. And, therefore, where a Court leet and baron are holden together, as they usually are, it seems that what is transacted therein in relation to public matters shall be applied to the jurisdiction of the Court leet; and what is done in relation to private matters shall be intended to be done by the Court baron. (2 *Hawk.* c. 10, s. 68.)

Pillory.

While the punishment of pillory might be awarded, the lord of the leet ought to have provided a pillory and tumbrel; and for want thereof he might have been fined or his liberty seized. (*Steverton v. Scrogs*, *Cro. Eliz.* 698.) But this punishment can no longer be awarded, and therefore this duty is at an end.

stocks.

But the stocks were to be provided at the charge of the town, for originally they were not to punish, but to keep men in hold. (*Wood's Inst.* b. 4, c. 1, s. 16; *Davies v. Lowden*, *Carter*, 29.) And these ought still to be provided.

Misuser or non-  
user.

A Court leet may be forfeited by misuser or nonuser. (*Sir J. Smith's case*, 4 *Mod.* 56.)

Mandamus to  
hold.

The Court will not grant a *mandamus* to the mayor of a corporation to hold a Court leet for the purpose of administering the oath of allegiance to an inhabitant desirous of taking it. (*R. v. Maidstone*, 6 *D. & R.* 334.) See the case of *R. v. Lord of Hundred of Milverton* (3 *Ad. & El.* 284), where a *mandamus* to hold a Court leet forthwith was granted.

Inspection.

A *mandamus* will not lie to allow the inspection of the records of a Court leet, unless the party assign some satisfactory reason for the inspection. (*Id.*) See also as to *mandamus*, tit. "*Mandamus*," *post*.

Business de-  
volved on the  
sessions.

The business of the leet hath, as well as that of the tourn, declined for many years, and is now devolved on the quarter sessions. (See 4 *Bla. Com.* 274; *Colebrook v. Elliot*, 3 *Burr.* 1864.)

## Libel.

What is a libel,  
in general.

A LIBEL, in its strict legal sense, consists of slander expressed in any other way than by mere words; such as written or printed slander, or slander conveyed by figures, signs, or pictures (*Du Bost v. Berea*, *5 Camp.* 512; 5 *Co.* 125, b.), or by any other symbol. (1 *Hawk.* c. 73, s. 2; *Jefferies v. Duncombe*, 11 *East*, 227; *Mayor of Northampton's case*, 1 *Stra.* 422.)

A libel is either in writing or without writing; in writing, when an epigram, rhyme, or other writing is published to the contumely of an-

other, by which his fame or dignity may be prejudiced; without writing, may be by pictures, as to paint the party in any shameful and ignominious manner, or by signs, as to fix a gallows or other reproachful and ignominious signs at a man's door, or the like. (*Anon.* 5 *Rep.* 125.)

Such slander, so conveyed, is indictable and punishable at common law, as it affects the public in general, and frequently tends to a breach of the peace; but mere verbal slander is not so. (*R. v. Bear*, 2 *Salk.* 417; *R. v. Langley*, 6 *Mod.* 125.) Unless it be seditious (see *post*, 335, 336); blasphemous (*post*, 335); grossly immoral; uttered to a magistrate in the execution of his office; or uttered as a challenge to fight a duel, or with an intention to provoke the other party to send a challenge. (*R. v. Langley*, 3 *Salk.* 190; 2 *Ld. Raymond*, 1029, *S.C.*; *R. v. Weltje*, 2 *Camp.* 142; *R. v. Wrighton*, 2 *Salk.* 698. See tit. "Challenge," Vol. I., tit. "Justices," *ante*, 172.)

Indictment for, when it lies.

It is a libel, though the defamatory matter therein be not expressed in direct terms, but merely in a scoffing and ironical manner; as where a person proposes one to be imitated for his courage who is known to be a great statesman, but no soldier; and another to be imitated for his learning, who is known to be a great general, but no scholar; and the like; which kind of writing is as well understood to mean only to upbraid the parties with the want of these qualities as if it had directly and expressly done so. (1 *Hawk.* c. 73, s. 4, 5.)

The manner in which the libel expressed.

And from the same foundation it hath also been resolved that a defamatory writing, expressing only one or two letters of a name, in such a manner that, from what goes before and follows after, it must needs be understood to signify such a particular person, in the plain, obvious, and natural construction of the whole, and would be perfect nonsense if restrained to any other meaning, is as properly a libel as if it had expressed the whole name at large; for it brings the utmost contempt upon the law, to suffer its justice to be eluded by such trifling evasions; and it is a ridiculous absurdity to say that a writing, which is understood by every the meanest capacity, cannot possibly be understood by a judge and jury. (1 *Hawk.* c. 73, s. 4. And see *Hicks's case*, *Hobart's Rep.* 215.)

Where one man said of another that "his character was infamous; that delicacy forbade him from bringing a direct charge, but it was a male child who complained to him," such words were understood to mean a charge of unnatural practices, and to be sufficiently certain in themselves, without the aid of an innuendo. (*Woolnoth v. Meadows*, 5 *East*, 463.)

So, if a man were to write or say of J. N., "There is a vast difference between my character and his; I never robbed my master," or the like, it would be the same as if he had directly charged J. N. with having robbed his master. (See *Snell v. Webbing*, 2 *Lev.* 150; 1 *Vent.* 276; *Com. Dig. Action on the Case for Defamation* (E. 8).)

And the same where the imputation is conveyed obliquely (*Id.* (E. 1)), or indirectly (*Id.* (E. 7)), or by way of question (*Id.* (E. 2)), conjecture (*Id.* (E. 3)), or exclamation (*Id.* (E. 6)), or by irony (1 *Hawk.* c. 73, s. 4), or the like.

Before the 6 & 7 Vict. c. 96, s. 6, the defendant could not on an indictment or information for a defamatory libel have pleaded that the matters contained in the libel were true, nor was he allowed to prove the truth of them, even in extenuation of punishment. (*R. v. Burdett*, 4 *B. & Ald.* 314; *R. v. Halpin*, 9 *B. & Cres.* 65; *Anon.*, 5 *Rep.* 125.) But the Court of Queen's Bench would not, in general, grant a criminal information for a libel without the fullest and most explicit denial on oath by the complainant of all the direct charges which the libel contained, *post*, 341. And now by the 6 & 7 Vict. c. 96, s. 6, *post*, 345, it is enacted that, on the trial of any indictment or information for a defama-

How far truth of publication a justification or extenuation for a libel.

*Libel.*

Sending a provoking letter or challenge.

Division of subject.

tory libel, the defendant having pleaded such plea as thereafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence unless it was for the public benefit that the said matters charged should be published. The plea, however, may aggravate the offence, and also subject the defendant to costs if the issue on it be found for the plaintiff. (*Id.* s. 7, *post*, 347, and s. 8, *post*, 348.)

It hath been resolved that the sending of a letter full of provoking language to another, without publishing it, is highly punishable, as manifestly tending to a disturbance of the peace. (1 *Hawk.* c. 73, s. 11; *R. v. Pownall*, 2 *Barnard.* 102.) The indictment ought expressly to allege the intention to be to provoke to a breach of the peace. (*R. v. Wegener*, 2 *Stark.* 245.)

As to sending a challenge to fight, see tit. "*Challenge*," Vol. I.

We will now proceed to inquire into the law of libel in a criminal point of view in the following order:—

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II. *Blasphemous and Seditious Libels*, p. 335.

Against Religion, p. 335.

——— Morality, p. 336.

——— the Queen, p. 336.

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——— Judges, Juries, Justices, etc., p. 337.

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III. *Who are liable for Libels, and what amounts to a Publication*  
p. 338 to 339.

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[9 & 10 Wm. 3, c. 32; 60 Geo. 3 and 1 Geo. 4, c. 8; 6 & 7 Vict. c. 96.]

V. *Publishing or threatening to Publish, etc., a Libel to obtain Money*, p. 352.

[6 & 7 Vict. c. 96, s. 3.]

VI. *Forms*, p. 352.

## I. Defamatory Libels.

## 1. Defamatory Libels.

It would obviously be impossible, in a work of this scope, to give a complete view of the law of libel, embracing every case in which publications affecting private individuals have been held to be libellous. It may be stated generally, however, that any slander, expressed either in printing, writing, signs, or pictures, tending either to blacken the memory of one that is dead or the reputation of one who is alive, and to expose him to disgrace, ridicule, or contempt, is indictable, though it do not impute any specific crime punishable in the temporal courts. Thus, to write that a person is a swindler or hypocrite, or that a woman has been guilty of fornication, or that a man is an itchy old toad, or the like, is libellous and indictable. (See *Bell v. Stone*, 1 B. & P. 331; *Savile v. Jardine*, 2 H. Bla. 532; *Villers v. Monsley*, 2 Wils. 404; *J Anson v. Stuart*, 1 T. R. 748; *R. v. Sir E. Lake*, Hard. 470; *Reg. v. Langley*, *Holt's Rep.* 654; *Thorley v. Lord Kerry*, 4 Taunt. 355.)

What a libel in general.

And it may be taken as a general rule, that, wherever an action will lie for a libel without laying special damages, an indictment is sustainable. (5 Co. 1256.) Also wherever an action will lie for verbal slander without laying special damage, an indictment will lie for the same words if reduced to writing and published. But the converse of this latter proposition will not hold good; for an action or indictment may be maintained for words written, for which an action could not be maintained if they were merely spoken. (*Thorley v. Lord Kerry*, 4 Taunt. 355.)

A greater latitude of observation has been allowed on books than on characters. When a work is sent into the world, the author subjects it to fair and impartial criticism. "That publication," said Lord *Ellenborough*, "I shall never consider as a libel which has for its object not to injure the reputation of any individual, but to correct misrepresentations of fact, to refute sophistical reasonings, to expose a vicious taste in literature, or to censure what is hostile to morality." (*Tabart v. Tipper*, 1 Camp. 352.) For this purpose the critic may employ ridicule, however poignant (see the notes in 1 Camp. 357); and it is even allowed to attack the author himself, so far as he has mixed himself up with the composition he has thought fit to publish; but the moment the critic travels from the book to follow the writer into his private life, and leaves his work to attack his character, the criticism becomes libellous. (*Carr v. Hood*, 1 Camp. 355, n.; *Stuart v. Lovell*, 2 Stark. 93; *Macleod v. Wakley*, 3 C. & P. 311; *Fraser v. Berkeley*, 7 C. & P. 621.) A fair and candid comment on a place of public entertainment in a newspaper, is not a libel. (*Dibden v. Swan*, 1 Esp. Rep. 28.) It is not, it seems, a libel fairly to comment on a petition relating to matters of general interest, which has been presented to Parliament and published. (*Dunne v. Anderson*, R. & M., C. N. P. 287; 3 Bing. 88; 10 Moore, 407, S. C.)

Criticism on books, etc.

In order to constitute the writing a libel an indictable offence, it must have been written or published with malice. (*R. v. Hart*, 1 Bla. Rep. 386; *R. v. Paine*, 5 Mod. 167.) The very publishing of the libel, however, is *prima facie* evidence of malice, and will require the defendant to rebut the presumption of it. (See *Gilb. Cases, Law and Equity*, 190 to 192; *R. v. Creevey*, 1 M. & S. 273, 282; *R. v. Lord Abingdon*, 1 Esp. 226.)

Malice.

On an indictment for a libel on the King, the jury, having retired for a considerable time, returned into Court, and desired to know whether it was necessary that there should be a malicious intention in order to constitute a libel, to which the judge answered, "The man who publishes slanderous matter, calculated to defame another, must be presumed to have intended to do that which the publication is calculated



### 1. *Defamatory Libels.*

to bring about, unless he can show the contrary; and it is for him to show the contrary." It was held, that this answer was correct in point of law, and that the judge was not bound to answer, in the affirmative or negative, the abstract question put to him; and, assuming that a malicious intention is necessary to constitute a libel, that intention is to be inferred from the mischievous tendency of the publication itself, unless the defendant shows something to rebut such inference; and, therefore, that the publication of a libel of mischievous tendency having been proved, and the defendant not having shown that he published it from authority as pretended, the jury were bound to find that he published it with a malicious intention. (*R. v. Harvey*, 2 B. & C. 257; 3 D. & R. 464, S. C.; and see *Duncan v. Thwaites*, 3 B. & C. 584; *Haire v. Wilson*, 4 M. & R. 605; 9 B. & C. 643.)

### Confidential communications.

Every wilful unauthorized publication injurious to the character of another is a libel; but where the writer is acting on any duty, legal or moral, towards the person to whom he writes, or where he has, by his situation, to protect the interest of that person, that which he writes under such circumstances is a privileged communication, and no action or indictment will lie for what is thus written, unless the writer be actuated by malice. (*Cockayne v. Hodgkisson*, 5 C. & P. 543.)

A publication, though defamatory, yet, if written *bonâ fide* in the discharge of some public or private duty, or in confidence, or with a view of investigating a fact in which the party making it is interested, is not a libel. (See *Moore v. Terrell*, 4 B. & Adol. 870; 1 N. & M. 559, S.C.; *Harrison v. Bush*, 5 E. & B. 344.)

A man has a right to communicate to any other any information he is possessed of in a matter in which they have a mutual interest; and it is a perfectly legal and justifiable object for one to induce another to become a party to a suit, as to a subject-matter in which both have an interest; and it is not because strong or angry language is used in such a communication that it will be a libel; but the jury must go further, and see not merely whether expressions are angry, but whether they are malicious. (*Shipley v. Todhunter*, 7 C. & P. 680.)

It is for the judge to say whether the privilege exists, and for the jury whether there is actual malice (*Cooke v. Wildes*, 5 E. & B. 328; *Gilpin v. Fowler*, 9 Exch. 615); but where a communication is *primâ facie* privileged, actual malice must be proved. (*Somerville v. Hawkins*, 10 C. B. 583; *Taylor v. Hawkins*, 16 Q. B. 308.)

### Proceedings in courts of justice.

Matter, though defamatory, if contained in any proceedings used in a regular course of justice, is not a libel. (*Lake v. King*, 1 Lev. 240; 1 Saund. 132, S. C.; 1 Hawk. c. 73, s. 8. See *Fairman v. Ives*, 1 D. & R. 252; *Revis v. Smith*, 18 C. B. 126; *Henderson v. Broomhead*, 4 H. & N. 569; 28 L. J. Ex. 360.)

### In Houses of Parliament.

It seems nothing can be charged as libellous which is contained in a petition to either House of Parliament, however it may affect individuals. (*Lake v. King*, 1 Lev. 240; 1 Saund. 132, S. C.) And the delivering of printed copies of the petition to all the members, and the necessary exposure of the manuscript to the compositors and other workmen concerned in printing it, are not indictable offences. (*Lake v. King*, 1 Lev. 240; 1 Saund. 132, S. C.) And the reason of this is manifest, because the Courts of justice and the great council of the State are the constitutional tribunals to which grievances should be preferred; and to bring alleged wrongs under their notice is to support, and not to break the peace, since their discussion puts an end to the dispute. But it is contended by *Hawkins*, that, where it appears from the whole circumstances of the case that the prosecution is commenced for the mere purpose of libelling, and without any intention to proceed in it, such an abuse and mockery of public justice should not become a shelter for the guilt which, in reality, they increased. (1 Hawk. c. 73, s. 6; 3 Chit. C. L. 870.)

Although it was always held to be lawful to publish a speech delivered by a party in his character of a member of Parliament (see 4 *Hen.* 8, c. 8; 1 *Will. & Mary*, st. 2, c. 2), yet this privilege was formerly considered to extend only to his speaking in the House, it being supposed that if he afterwards published his speech, he was amenable for it, in the same manner as any other person (*R. v. Crewey*, 1 *M. & Sel.* 273; *R. v. Lord Abington*, 1 *Ésp.* 226), unless it was *bonâ fide* addressed to his constituents (*Davison v. Duncan*, 7 *E. & B.* 229); but this view is now exploded. (*Wason v. Walter*, *Q. B.*, *M. T.* 1868.)

It was held in *Stockdale v. Hansard*. (9 *Ad. & E.* 1), that an action would lie for publishing a document containing matter defamatory of a private individual, although the document had been laid before the House of Commons by order of the House, and was afterwards published by the defendant by order of the House.

In consequence of this decision, the 3 & 4 *Vict.* c. 9, was passed, which by sect. 1, reciting that it is essential to the due and effectual exercise and discharge of the functions and duties of Parliament, and to the promotion of wise legislation, that no obstructions or impediments should exist to the publication of such of the reports, papers, votes, or proceedings of either House of Parliament, as such House of Parliament may deem fit or necessary to be published. And whereas obstructions or impediments to such publication have arisen, and hereafter may arise, by means of civil or criminal proceedings being taken against persons employed by or acting under the authority of the Houses of Parliament, or one of them, in the publication of such reports, papers, votes, or proceedings, by reason and for remedy whereof it is expedient that more speedy protection should be afforded to all persons acting under the authority aforesaid, and that all such civil or criminal proceedings should be summarily put an end to and determined in manner hereinafter mentioned. Be it, therefore, enacted by the Queen's most excellent majesty, by and with the advice and consent of the lords spiritual and temporal, and Commons in this present Parliament assembled, and by the authority of the same, That it shall and may be lawful for any person or persons who now is or are, or hereafter shall be, a defendant or defendants in any civil or criminal proceeding commenced or prosecuted in any manner soever, for, or on account, or in respect of the publication of any such report, paper, votes, or proceedings, shall have been or shall be so commenced or prosecuted, or before any judge of the same (if one of the superior Courts at Westminster), first giving twenty-four hours' notice of his intention so to do to the prosecutor or plaintiff in such proceeding, a certificate under the hand of the Lord High Chancellor of Great Britain, or the Lord Keeper of the Great Seal, or of the Speaker of the House of Lords for the time being, or of the Clerk of the Parliaments, or of the Speaker of the House of Commons, or of the Clerk of the same House, stating that the report, paper, votes, or proceedings, as the case may be, in respect whereof such civil or criminal proceeding shall have been commenced or prosecuted, was published by such person or persons, or by his, her, or their servant or servants, by order or under the authority of the House of Lords or of the House of Commons, as the case may be, together with an affidavit verifying such certificate, and such Court or judge shall thereupon immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein, shall be and shall be deemed and taken to be finally put an end to, determined and superseded, by virtue of this Act."

Sect. 2. "And be it enacted that, in case of any civil or criminal proceeding hereafter to be commenced or prosecuted for, or on account, or in respect of the publication of any copy of such report, paper, votes, or proceedings, it shall be lawful for the defendant or defendants at any stage of the proceedings to lay before the Court or judge such report, paper, votes, or proceedings, and such copy, with an affidavit verifying such report, paper, votes, or proceedings, and the correctness of such

### 1. Defamatory Libels.

copy, and the Court or judge shall immediately stay such civil or criminal proceeding, and the same, and every writ or process issued therein, shall be, and shall be deemed and taken to be, finally put an end to, determined, and superseded, by virtue of this Act."

Sect. 3. "And be it enacted that it shall be lawful in any civil or criminal proceeding to be commenced or prosecuted for printing any extract from or abstract of such report, paper, votes, or proceedings, to give in evidence under the general issue such report, paper, votes, or proceedings, and to show that such extract or abstract was published *bonâ fide* and without malice, and if such shall be the opinion of the jury, a verdict of not guilty shall be entered for the defendant or defendants."

### Proceedings of court martial.

If a court martial, after stating in their sentence the acquittal of an officer against whom a charge has been made, subjoin thereto a declaration of their opinion that the charge is malicious and groundless, and that the conduct of the prosecutor in falsely calumniating the accused is highly injurious to the service, it is no libel, though the president of the court martial deliver such sentence and declaration to the judge-advocate. (*Jekyll v. Sir John Moore*, 6 *Esp. Rep.* 63; 2 *B. & P. New Rep.* 341, *S. C.*)

### Courts of justice.

A fair and strict report of proceedings in a court of justice is no libel. (See *Lewis v. Walter*, 4 *B. & Ald.* 605.) As to what is a fair report, it is to be observed, that the publication of the history of a trial consisting of the facts of the case, and of the law of the case as applied to those facts, is lawful. Counsel in the discharge of their duty, and in matters relative to the issue, may make observations injurious to individuals (*Hodgson v. Scarlett*, 1 *B. & Ald.* 232); but the publication of such slanderous matter is not justifiable, unless it be shown that it was published for the purpose of giving the public information which it was fit and proper for them to receive, and that it was warranted by the evidence. (*Flint v. Pike*, 6 *Dowl. & R.* 528; 4 *B. & C.* 473, *S. C.*) So, in the publication of evidence given on a trial, the evidence itself, and not the result of evidence, should be given. (*Lewis v. Walter*, 4 *B. & Ald.* 606. See *Roberts v. Brown*, 10 *Bingh.* 523.)

And a publication of proceedings in a Court of justice, containing defamatory matter, would be a libel, if the account be highly coloured or false (*Waterfield v. The Bishop of Chichester*, 2 *Mod.* 118; *Stile v. Nokes*, 7 *East*, 493); or be commented upon with injurious remarks (*Lewis v. Clement*, 3 *B. & Ald.* 702; *S. C. in error*, 7 *Moore*, 200; 2 *B. & B.* 297; *Stiles v. Nokes*, 7 *East*, 493; *R. v. Fleet*, 1 *B. & Ald.* 379; *R. v. Fisher*, 2 *Campb.* 570; *R. v. Lee*, 5 *Esp.* 123); or where it does not set forth all the material evidence (*Saunders v. Mills*, 6 *Bingh.* 213; 3 *M. & P.* 520, *S. C.*); or where the publication is not for the mere purpose of publishing the account, but expressly for libelling the party, or for the vehicle of blasphemy, indecency, or the like. (*Reg. v. Cartile*, 3 *B. & Ald.* 167; *R. v. Creevey*, 1 *M. & Sel.* 279; *Lake v. King*, 1 *Saund.* 131, 133.) The fairness of the report is a question for the jury. (*Cooper v. Lawson*, 1 *P. & D.* 15; 8 *A. & Ell.* 746, *S. C.*)

The publication must also be strictly confined to the proceedings in Court, and cannot be justified if it contain disparaging observations by any other than a judge of the Court. (*Delegal v. Highley*, 3 *Bing. N. C.* 950.)

### Proceedings before justices, coroners, etc.

A publication of defamatory matter, which took place on *ex parte* proceedings, as at a public office, or coroner's inquest, or the like, is indictable. (*Duncan v. Thwaites*, 5 *D. & R.* 447; 3 *B. & C.* 556; *R. v. Lee*, 5 *Esp.* 123; *R. v. Fisher*, 2 *Camp.* 563; *R. v. Fleet*, 1 *B. & Ald.* 379; *Lewis v. Walter*, 4 *B. & Ald.* 605; *East v. Chapman*, *M. & M.* 46; 2 *C. & P.* 570, *S. C.*; *Charlton v. Watton*, 6 *C. & P.* 385.)

If a party who has summoned another before a magistrate draws up a report of what took place on the investigation, it is his duty to give an impartial statement, without any colouring or exaggeration, putting in all

that is in favour of the party accused, as well as that which is against him; and in such report he has no right to insert an observation to the prejudice of the party made by the magistrate's clerk; and if he do insert such observation, he is liable, on that ground alone, to an action for libel; and in such a case, it is what the judge says that is to be looked at, and not what any other person said who was present at the time. (*Delegal v. Highley*, 8 Car. & P. 444; 5 Scott, 154; 3 Bing. N. C. 950, S. C.; *Lewis v. Levy*, E. B. & E. 537.)

And if libellous matter be stated before a magistrate not acting in discharge of his ministerial functions, the publication of it in writing cannot be justified on the ground of its being a correct report of the proceedings. (*McGregor v. Thwaites*, 4 D. & R. 695; 3 B. & C. 24, S. C.)

The publication of a libel is not justifiable on the ground that it is no more than a report of what was promulgated at a public meeting. (*Hearne v. Stowell*, 12 Ad. & Ell. 719; 4 P. & D. 696, S. C.; *Davison v. Duncan*, 7 E. & B. 229; *Popham v. Pickburn*, 7 H. & N. 891; 31 L. J. Ex. 133.)

2. *Blasphemous and Seditious Libels.*

Discussion at public meeting.

Every man has a right to give every public matter a candid, full, and free discussion; but although other people have a right to discuss any grievances they have to complain of, they must not do it in a way to excite tumult; and if a party publish a paper on any such matter, and it contain no more than a calm and quiet discussion, allowing something for a little feeling in men's minds, that will be no libel; but if the paper go beyond that, and be calculated to excite tumult, it is a libel. (*Reg. v. Collins*, 9 Car. & P. 456.)

## II. Blasphemous and Seditious Libels.

All blasphemies against God, as denying his being or providence; and all contumelious reproaches of Jesus Christ; all profane scoffing at the Holy Scriptures, or exposing any part of them to contempt or ridicule; impostors in religion, as falsely pretending to extraordinary commissions from God, and terrifying or abusing the people with false denunciations of judgments; and all open lewdness grossly scandalous—are punishable by fine and imprisonment, and also such corporeal punishment as to the Court shall seem meet, according to the heinousness of the crime. (1 Hawk. c. 5, s. 6; 1 East's P. C. 3.)

Blasphemy.

Also seditious words, in derogation of the established religion, are indictable, as tending to a breach of the peace. (1 Hawk. c. 5, s. 6.)

Punishment for.

It is immaterial whether the blasphemous publication be verbal or written (2 Stark. S. C. 141).

Not material whether oral or written.

Publications blaspheming the Almighty, or turning the doctrines of the Christian religion (which is part of the law of the land) into contempt and ridicule, are indictable at common law as public libels. Therefore, a publication stating that our Saviour was an impostor, a murderer in principle, and a fanatic, is a blasphemous and scandalous libel, and indictable accordingly. (*R. v. Waddington*, 1 B. & C. 26; and see *R. v. Williams*, Holt on Libel, 69, n.; *R. v. Woolston*, Fitzgib. 64; *R. v. Taylor*, 1 Vent. 293; *R. v. Carlile*, 3 B. & Ald. 161.)

Libels against religion.

It is an indictable offence at common law to publish a blasphemous libel of and concerning the Old Testament. (*Reg. v. Hetherington*, 5 Jur. 529.)

But, although to write against Christianity in general is an offence at common law, the Court will not meddle with differences of opinion upon controverted points. (*R. v. Woolston*, Fitzgib. 66.)

2. *Blasphemous and Seditious Libels.*

Publications subversive of morality, and tending to vitiate and corrupt the minds and morals, or inflame the passions, of the people, are libels, and indictable accordingly. (*R. v. Curl*, 2 *Str.* 788; *R. v. Wilkes*, 4 *Burr.* 2527.)

Against morality.

Oral communications of this nature are equally punishable when made before a large assembly, and when there is a clear tendency to produce immorality, as in the case of obscene plays. (2 *Stark. on Lib.* 159.)

Against the Queen.

Publications tending to vilify or disgrace the Queen, to lessen her in the esteem of her subjects, weaken her government, or raise jealousies between her and her people, are libels, and indictable accordingly. (4 *Bla. Com.* 123.) It was, therefore, held a false publication that King George the Third was labouring under mental derangement. (*R. v. Harvey*, 2 *B. & C.* 257; 3 *D. & R.* 464, *S. C.*) But a publication imputing mere error in judgment, even to the sovereign himself, if done "with perfect decency and respect, and without any imputation of bad motives," is not a libel. (*R. v. Lambert*, 2 *Campb.* 402.)

Against the constitution.

Publications tending to degrade and vilify the *constitution*, and to circulate discontent and sedition among the people, are libels, and indictable accordingly; as, a publication stating that the laws of the realm are contrary to the laws of God (2 *Roll. Abr.* 70), or any seditious publication. (*R. v. Harrison*, 3 *Keb.* 841; *Harrington's case*, 1 *Ventr.* 324; *Holt on Lib.* 88.)

If a paper, published by the defendant, has a direct tendency to cause unlawful meetings and disturbances, and to lead to a violation of the laws, it is a seditious libel; and with respect to the intent, every one must be taken to intend the natural consequences of what he has done. (*Reg. v. Lovett*, 9 *Car. & P.* 462.)

Against the government.

Publications tending to bring the government in general into contempt, or to destroy the peace of the government, are libels, and indictable accordingly. Thus, any publication tending to persuade the people that the government is mal-administered, and that corrupt persons are employed in certain public stations, has been held to be a libel on the government. (*R. v. Tuchin*, *Holt's Rep.* 424; 2 *St. Tri.* 532; 14 *How. St. Tri.* 1095, *S. C.*)

Government is no more than public order, which is morality.

In a criminal information against the defendant for publishing a libel upon the administration of the Irish government, and upon the public conduct and character of the Lord-Lieutenant and Lord-Chancellor of Ireland, Lord *Ellenborough*, C.J., in his address to the jury, observed, "It is no new doctrine, that, if a publication be calculated to alienate the affections of the people, by bringing the government into disesteem, whether the expedient be by ridicule or obloquy, the person so conducting himself is exposed to the inflictions of the law. It is a crime. It has ever been considered as a crime, whether wrapt in one form or another. The case of *The King v. Tuchin*, decided in the time of Lord C. J. *Holt*, has removed all ambiguity from this question; and although at the period when that case was decided, great political contentions existed, the matter was not again brought before the judges of the Court by any application for a new trial. No man has a right to render the person or abilities of another ridiculous, not only in publications, but, if the peace and welfare of individuals or of society be interrupted, or even exposed, by types and figures, the act, by the law of England, is a libel. It has been observed, that it is the right of the British subject to exhibit the folly or imbecility of the members of the government. But, gentlemen, we must confine ourselves within limits. If, in so doing, individual feelings are violated, there the line of interdiction begins, and the offence becomes the subject of penal visitation." The defendant was found guilty, but not called up for judgment, having redeemed himself by giving up the author of the libel, who was im-

mediately prosecuted and convicted. (*R. v. Cobbett, Holt on Libel*, 114, n.)

A party may be indicted and punished for a libel on a foreign king or government: as in the case of *R. v. Peltier*, 1803 (*Holt, on Libel*, 78), where the defendant published a libel on Napoleon Buonaparte. (And see *R. v. Vint*, 1 *Russ. on Cr.* 351, 4th ed.; *R. v. D'Eon*, 1 *Bl. Rep.* 510.)

2. *Blasphemous and Seditious Libels.*

Against foreign governments.

A publication, being an invective against judges and juries, with a view to bring into suspicion and contempt the administration of justice in the country, is a libel. It is lawful, however, with candour and decency, to discuss the merits, or the verdict of a jury, or the decisions of a judge. (*R. v. White*, 1 *Camp.* 359.) An order made by a corporation, and inserted in their books, that a person, against whom a jury have given large damages in an action for a malicious prosecution, has been actuated by motives of public justice, is libellous, as tending to throw discredit on judicial proceedings. (*R. v. Watson*, 2 *T. R.* 199; *Vin. Ab. "Contempt,"* (A. 44).)

Against judges, juries, etc., justice, etc.

We have already seen that mere verbal slander against a magistrate, concerning him in the execution of his office, is indictable, *ante*, 172.

Libels on persons employed in a public capacity are regarded as more aggravated, as they tend to scandalize the government by reflecting on those who are entrusted with the administration of public affairs; for they not only endanger the public peace, as all other libels do, by stirring up the parties immediately concerned to acts of revenge, but also have a direct tendency to breed in the people a dislike of their governors, and incline them to faction and sedition. (1 *Hawk. c.* 73, s. 7; 1 *Russ. on Cr.* 340, 4th ed.)

Against persons in public capacities.

A publication may be a libel on a private person, which would not be any libel on a person in a public capacity; but any imputation of unjust or corrupt motives is equally libellous in either case. (*Parmiter v. Coupland*, 6 *M. & W.* 105.)

The rule with respect to libels on public characters and persons in authority is, that every person has a right to comment openly and strongly on their conduct, provided it be done *bonâ fide*, and without imputing to them any corrupt or dishonest motive. (*Ib.*)

Publications casting general defamatory imputations on a particular body of men, though no particular individuals are pointed out, are indictable, because such writings have a tendency to influence and disorder society, and to raise tumults and disorders among different classes of people. (*R. v. Osborn*, 2 *Barnard.* 138, 166; *sed vide R. v. Alme*, 3 *Salk.* 224; 1 *Ld. Raym.* 486, *S. C.*)

On bodies of men, and several persons.

The Court granted a criminal information against the publisher of a newspaper, for a libel reflecting on the clergy of a particular diocese, and generally upon the church of England, though no individual prosecutor was named, and though the libellous matter was not negatived by affidavit. And it was there considered sufficient to state the publication by the defendant. (*R. v. Williams*, 1 *D. & R.* 197; 5 *B. & Ald.* 595, *S. C.*)

A publication, stating that "unarmed and unresisting men had been inhumanly cut down by the dragoons," was held a libel upon the King's troops, although no particular dragoons or troops were defined in it. (*R. v. Burdett*, 4 *B. & Ald.* 314.)

A libel on a deceased person, if it have a tendency to create a breach of the peace, by inciting the friends and relatives of the deceased to avenge the insult offered to the family, is indictable. In such case, it should be averred in the proceedings, and proved on the trial, that the publication was intended to create disturbance, to throw scandal on the

Against deceased persons.

3. *Who are Liable, etc.* family or descendants of the party accused, or to induce some one to break the peace, for the purpose of vindicating the deceased. (*R. v. Topham*, 4 *T. R.* 126; *Anon.*, 5 *Rep.* 125; 3 *Chit. C. L.* 868.)

### III. Who are liable for Libel, and herein as to what is a Publication.

Composer, procurer, and publisher.

It is certain that, not only he who composes a libel, or procures another to compose it, but also he who publishes or procures another to publish it, is in danger of being punished for it; and it is said not to be material, whether he who disperses a libel know anything of the contents or effect of it or not; for nothing would be more easy than to publish the most virulent papers with the greatest security, if concealing the purport of them from an illiterate publisher would make him safe in dispersing them. (1 *Hawk. c.* 73, s. 10.) But in *R. v. Burdett* (4 *B. & Ald.* 95), it was questioned whether the writing and composing a libel with intent to publish, but not followed by publication, was an indictable offence. (And see *R. v. Burdett*, 3 *B. & Ald.* 717.)

Also, it hath been said that, if he who hath either read a libel himself, or hath heard it read by another, do afterwards maliciously read or repeat any part of it in the presence of others, or lend or show it to another, he is guilty of an unlawful publication of it. (1 *Hawk. c.* 73, s. 10.)

Copying a libel.

Also, it hath been holden, that the copying of a libel shall be a conclusive evidence of the publication of it, unless the party can prove that he delivered it to a magistrate to examine it. (1 *Hawk. c.* 73, s. 10.)

Sending MSS. to a publisher.

If A. send a manuscript to the printer of a periodical publication, and do not restrain the printing or publishing of it, and the latter prints and publishes it in that publication, A. is liable as the publisher. (*Burdett v. Abbot*, 5 *Dow*, 201.)

Writing a libel dictated by another.

It seems to be the better opinion, that he who first writes a libel dictated by another is thereby guilty of making it, and consequently punishable for the bare writing; for it was no libel till it was reduced to writing; for the essence of a libel consisteth in the writing of it; if a man speak such words, unless the words be put in writing, it is not a libel. (*R. v. Bear*, 2 *Salk.* 419; 1 *Ld. Raym.* 414, *S. C.*; 1 *Hawk. c.* 73, s. 10.)

Showing it to another.

A person who, having a copy of a libellous caricature, shows it to another on being requested so to do, is not, it seems, thereby liable to an action for maliciously publishing it. (*Smith v. Wood*, 3 *Camp.* 323; *sed quære as to thts*, see *R. v. Burdett*, 4 *B. & Ald.* 95.)

Sending a letter by defendant.

The transmission of a letter by defendant to his correspondent abroad is a sufficient publication by defendant. (*Ward v. Smith*, 6 *Bing.* 749; 4 *M. & P.* 595; 4 *C. & P.* 302, *S. C.*)

Delivering a sealed letter.

In the case of *R. v. Burdett* (4 *B. & Ald.* 95), it was held, that delivering a libel sealed, that it may be opened and published by a third person in a distant county, is a publication. (See also *Warren v. Warren*, 1 *C. M. & R.* 250, as to a publication by sending a letter by the post.)

Innocently delivering a libel.

A porter, who, in the course of business, delivers parcels containing libellous handbills, is not liable in an action for libel, if he be shown to

be ignorant of the contents of the parcel. (*Day v. Bream*, 2 M. & Rob. 54.)

4. *The Prosecution of Libellers.*

And it hath been resolved, that he who barely reads a libel in the presence of another, without knowing it before to be a libel, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. (1 *Hawk. c. 73*, s. 13.)

Innocently reading a libel.

The having in one's custody a written copy of a libel, publicly known, is evidence of the publication of it. (1 *Hawk. c. 73*, s. 13.) But this would be otherwise if it were not a libel of such public notoriety; for, generally speaking, no man can be charged with *having* a libel in his possession with *intent* to publish it; for the mere having is no act. (*R. v. Rosenstein*, 2 C. & P. 414.)

Having in possession.

If a libel be stolen, it is no publication. (*Semb. Barrow v. Lewellin*, *Hob.* 62.)

Libel stolen.

And it hath been ruled that the finding a libel on a bookseller's shelf is a publication of it by the bookseller; and that it is no excuse to say that the servant took it into the shop without the master's knowledge; for the law presumes the master to be acquainted with what the servant does. (*R. v. Dodd*, 2 *Sess. Cass.* 33; *R. v. Almon*, 20 *How. St. Tri.* 803; *Com. Dig. Libel* (B. 1). And see as to the master's liability for the servant's acts, tit. "*Servants*," *Vol. V.*)

Finding a libel on a bookseller's shelf.

Acts of servants.

But by the recent stat. 6 & 7 Vict. c. 96, s. 7, *post*, 347, the defendant may, after evidence given against him establishing a presumptive publication by the act of any other person by his authority, prove that the publication took place without his authority, consent, or knowledge, and that it did not arise from the want of due care or caution on his part.

Publication by servant, etc., master may show it was without his consent, and without negligence on his part.

A newspaper proprietor, also, is always *prima facie* liable for whatever libel appears in it; but he may, under special circumstances, rebut that liability. (*R. v. Gutch and others*, M. & M. C. N. P. 433. And see *R. v. Almon*, 5 *Burr.* 2686; 20 *How. St. Tri.* 803; *Attorney-General v. Riddle*, 2 C. & J. 493; *Attorney-General v. Siddon*, 1 C. & J. 220; 6 & 7 Vict. c. 96, s. 7, *post*, 347.)

Newspaper proprietor.

As to the proof of publication by a newspaper proprietor, see tit. "*Newspapers*," *post*.

Every copy of a libel sold by a defendant is a separate publication, and subjects him to a distinct prosecution; and, therefore, the defendant may be prosecuted by an information filed by the Attorney-General, although an indictment has been brought on the prosecution of a different person, for publishing different copies of the same libel. (*R. v. Curtile*, 1 *Chit. Rep.* 451.)

Several publications.

The delivery of a letter or writing containing a challenge or provoking language calculated to produce a breach of the peace is of itself indictable, though there has been no publication to a third party.

Sending a challenge or provoking letter.

## IV. The Prosecution of Libellers.

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2. *Criminal Information for*, 341.
3. *Indictment for*, 342.



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4. *Plea to*, 345.
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1. THE POWER OF JUSTICES TO APPREHEND THEM.

(1.) The power of justices to apprehend libellers.

The following was the opinion of the Attorney and Solicitor-General in 1817, on a case officially referred to them by the Secretary of State for the Home Department; it will also be found in 3 *Burn's J.*, 24th edit.

"We are of opinion that a warrant may be issued to apprehend a party charged on oath for publishing a libel, either by the Secretary of State, a judge, or a justice of the peace." (See *Hansard's Parliamentary Debates*, Vol. XXXVI. p. 449, n. See also 19 *Howell's St. Tri.* 1029.)

"With respect to the Secretary of State, in the case of *Entick v. Carrington*, as reported by Mr. Hargrave, though the Court were of opinion the warrants which were then the subject of discussion were illegal, yet Lord Camden declared, and in which he stated the other judges agreed with him, that they were bound to adhere to the determination of *The Queen v. Derby*, and *The King v. Erbury*, in both of which cases it had been holden that it was competent to the Secretary of State to issue a warrant for the apprehension of a person charged with a scandalous and seditious libel, and that they, the judges, had no right to overturn those decisions." (*Fort.* 140, 37; 8 *Mod.* 177.)

"With respect to the power of a judge to issue such warrant, it appears to us that, at all events, under the statute of 48 Geo. 3, c. 38, a judge has such power, upon an affidavit being made in pursuance of that Act. A judge would probably expect that it should appear to be the intention of the Attorney-General to file an information against the person charged.

"With respect to a justice of the peace, the decision of the Court of Common Pleas, in the case of Mr. *Wilkes*'s libels, only amounts to this, that libel is not such an actual breach of the peace as to deprive a member of Parliament of his privilege of Parliament, or to warrant the demanding sureties of the peace from the defendant; but there is no decision or opinion that a justice of the peace might not apprehend any person not so privileged, and demand bail to be given to answer the charge. It has certainly been the opinion of one of our most learned predecessors that such warrants may be issued and acted upon by justices of the peace, as appears by the cases of *Thomas Spence* and *Alexander Hogg*, in the year 1801. (19 *Howell's St. Tri.* 1075.) We agree in that opinion, and, therefore, think that a justice of the peace may issue a warrant to apprehend a person charged by information on oath with the publication of a scandalous and seditious libel, and to compel him to give bail to answer such charge.

"Lincoln's Inn,  
"Feb. 24th, 1817."

"W. GARROW,  
"S. SHEPHERD."

And in the case of *Butt v. Conant* (1 *B. & B.* 548; 4 *Moore*, 195, *S.C.*) it was settled that a justice of the peace has authority to issue his warrant for the arrest of a party charged on oath with having published a libel, and, upon the neglect of the party so arrested to find sureties, may commit him to prison, there to remain till he be delivered by due course of law. (And see *R. v. Bartlett*, 3 *Dowl.* 95.)

Recognizance on a seditious libel.

By the 60 Geo. 3 & 1 Geo. 4, c. 9, s. 16, any justice before whom any person is charged with printing or publishing any blasphemous, seditious, or defamatory libel, may make it a part of the condition of the recogni-

zance that he shall be of good behaviour during the continuance of the recognizance. (See tit. "*Newspapers*," *post*.)

4. *The Prosecution of Libellers.*

## 2. CRIMINAL INFORMATION FOR.

Where the libel is of a blasphemous nature, or is directed against religion, or against the Queen or her government, or is otherwise of a serious and public nature, the offender is usually prosecuted by *ex officio* information in the Queen's Bench, filed by the Attorney-General. And it is usual to grant a criminal information for a libel on a public body of men upon an affidavit stating the publication by the defendant, though there be no known prosecutor. (*R. v. Osborn*, 2 *Barnard*. 138, 166; 2 *Swanst.* 503 n. (c); *R. v. Williams*, 5 *B. & Ald.* 595; 1 *D. & R.* 197, *S. C.*)

(2.) By information.

Where libel affects the public.

It is said that the Court will not grant a criminal information at the instance of a private prosecutor for a public libel against the Queen or her government. (See 4 *Bla. Com.* c. 23, s. 3; *sed vide R. v. Norris*, 2 *Lord Ken.* 300; *R. v. Steward*, 2 *B. & Adol.* 12.)

In granting criminal informations for libels on individuals, the Court will always exercise a discretionary power; as, where the application is made after a great length of time, or the matter complained of appears to be true, or the granting it would be a discouragement to learned inquirers, or where the matter complained of was intended for reformation, not defamation. (*Bac. Ab. Libel*; *R. v. Bickerton*, 1 *Str.* 498.)

Where it affects individuals.

In order to maintain an application for a criminal information, the party applying must leave himself wholly in the hands of the Court, and in no way whatever make libellous attacks on the other side. (*Reg. v. Nottingham Journal Proprietors*, 9 *Dowl.* 1042.)

Where a libel was published in a newspaper reflecting upon the verdict of a jury, and one of the jury sent to the others copies of a letter signed on behalf of himself and his fellows, intended to be inserted in a newspaper, containing animadversions upon the libel, and the other jurors took no step to prevent or to express their disapprobation of the publication of such letter, the Court refused to grant to those jurors a summary remedy by criminal information. (*Reg. v. Lawson*, 1 *Gale & D.* 15; 1 *Q. B.* 490, *S. C.*)

The Court granted a criminal information for publishing, with comments, a statement of the evidence given before a coroner's jury before the investigation was concluded; and it matters not that such statement is correct and that there is no malice. (*R. v. Fleet*, 1 *B. & Ald.* 379.)

In a case where the defendants had employed a man to parade with and exhibit before the auction-room of the plaintiff a libellous placard, containing the words "Beware of mock auctions, of swindlers, and pick-pockets," upon its appearing that the plaintiff had just grounds to apprehend partiality if he proceeded by indictment, and the affidavit stating that the auctions were conducted on fair and honourable principles, that the plaintiff rendered a daily account to the Board of Excise, and that the auctions were real and not mock auctions, the Court granted a rule nisi to show cause why a criminal information should not be filed. (*Ex parte Genese*, *Trin. Term*, 1818, *Collyer's Stat.* 365, n.)

The Court will not grant the information where the prosecutor has had recourse to any other remedy. If an indictment has been preferred, although it be quashed for informality (*Anon.*, 8 *Mod.* 187), if an action be pending (*R. v. Fielding*, 2 *Burr.* 719), if a warrant have been taken out (4 *Ad. & E.* 576, n.), the remedy by criminal information is gone; and no offer on the prosecutor's part to discontinue the other proceedings will then avail him. (*Cooke on Libel*, 211.) If an action is brought after an information has been granted, it is of course to stay the proceedings in the action. (*Per Ashurst, J.*, in *R. v. Sparrow*, 2 *T. R.* 198.) But, if the defendant does not apply to stay proceedings in the action, the Court will pass no sentence upon a conviction on the infor-

#### 4. *The Prosecution of Libellers.*

mation, even although the prosecutor then offer to discontinue the action. (*R. v. Mahon*, 4 *Ad. & E.* 575.)

Where the libel contains a direct charge, which it lies in the power of the applicant to deny if false, the Court will require a full and positive affidavit that the charge is unfounded. (*R. v. Miles*, 1 *Dougl.* 284; *R. v. Wright*, 2 *Chit. Rep.* 162; *R. v. Bradley*, 1 *M. & R. M. C.* 387.) And it seems that the defendant might, even before the 6 & 7 Vict. c. 96, *post*, 345, have proved the truth of the matters alleged to be false and libellous. (*R. v. Bradley*, 1 *M. & R. M. C.* 387.) But, where the person slandered is in a foreign country at a great distance, so that he cannot make affidavit; where the allegations of the libel go to general character, and not to particular facts, to which it would be absurd to require a denial; or where the imputation is of seditious language in Parliament, which no one can impute, because nothing that passes there is liable to question,—such affidavit will not be required. (*R. v. Haswell*, *Dougl.* 387; *R. v. Wright*, 2 *Chit. Rep.* 162.) And we have just seen that this affidavit is not necessary where the libel is on a public body. (*R. v. Williams*, 5 *B. & Ald.* 595; 1 *D. & R.* 197, *S. C.*) Where a charge of bigamy was made, and it appeared that the party charged was not free from blame, and therefore not entitled to a criminal information, yet one was granted for the protection of his wife and children, whose legitimacy had been called in question by the libel. (*R. v. Gregory*, 8 *Ad. & E.* 907.)

### 3. INDICTMENT FOR.

#### (3.) By indictment.

An indictment for a libel is certainly the most constitutional, and, in many respects, the most easy remedy. By the 5 & 6 Vict. c. 38, s. 1, no Court of quarter-sessions can try any indictment for composing, printing, or publishing blasphemous, seditious, or defamatory libels.

#### Venue.

The *venue* should be laid in the county where the publication of the libel took place; and proof must be adduced of the publication in that county. It seems that, in case of a libellous letter, the venue may be laid either in the county where it was written and put into the post-office, or in that where it was delivered to the party to whom it was addressed. (*R. v. Watson*, 1 *Camp.* 215; *R. v. Williams*, 2 *Camp.* 506; 1 *Leach*, 143.) And, where the defendant writes and composes a libel in one county with an intent to publish it, and afterwards publishes it, in another, he may be indicted in either. (*R. v. Burdett*, 4 *B. & Ald.* 95; *Bayley*, *J., dub.*) A delivery of a sealed letter enclosing a libel at a post-office in L. is, it seems, a publication of the libel there. (*Ib.* See *R. v. Hon. Robert Johnson*, 7 *East*, 68; *R. v. Burdett*, 3 *B. & Ald.* 717.)

But in *R. v. Watson* (1 *Camp.* 215), Lord *Ellenborough* held that the post-mark of a particular place within the county, upon a letter containing the libel, was no evidence of a publication in that county; for the post-mark might be forged. But it would seem that post-marks are evidence that the letters on which they are were in the office to which the post-mark belongs at the date thereby specified. (See *R. v. Plumer*, *R. & R.* 264; *R. v. Johnson*, 7 *East*, 65.)

#### Inducement.

If the matter written does not on the face of it appear libellous, but requires some explanatory facts to show it is so, then it is necessary to insert an averment of such facts, which is best done by a formal *inducement*; for, in setting out a libel of this nature, its libellous meaning cannot be explained by an innuendo of a fact not previously stated on the record with legal precision and certainty; in other words, an innuendo unconnected with preparatory averment cannot enlarge the sense of a libel. (See *Holt v. Scholfield*, 6 *T. R.* 691; 4 *Co.* 17 *b.*; *Woolnoth v. Meadows*, 5 *East*, 469; *Goldstein v. Foss*, 2 *Y. & J.* 146; 4 *Bingh.* 489, 1 *M. & P.* 402; 6 *B. & Cres.* 154, *S. C.*; 3 *Chit. C. L.* 873.) Thus, it is erroneous to charge that the defendant said of another, he burnt my barn, adding, by way of innuendo, “meaning, my barn full of corn,” be-

cause this is not an explanation of what was said before, but an addition to it. (*Barham's case*, 4 Co. 20 a.) But, had it been averred in the introduction, that the defendant had a barn full of corn, and that, in a conversation respecting that barn, the words were uttered, the innuendo would have been good, and, by coupling the libel with the inducement, the sense would have been complete. (*R. v. Horne*, *Cowp.* 684; and see 3 *Chit. O. L.* 874, and cases there cited.)

Where a person's name does not appear in the libel, or he is libelled under a fictitious character, it is necessary to aver to whom the libellous matter refers. (*R. v. Alderton*, *Sayer*, 280, cited *Cowp.* 683; *R. v. Marsden*, 4 M. & S. 164. See *Hawkes v. Hawkey*, 8 East, 427.)

But, where the libel asserted that "Englishmen were inhumanly murdered by the King's troops," the averment, that it was published "of and concerning his said Majesty's government, and the employment of his troops," was considered sufficient. (*R. v. Horne*, *Cowp.* 672; and see *Tuchin's case*, 14 How. St. Tri. 1095; *R. v. Burdett*, 4 B. & Ald. 314; 1 Russ. 324, 4th ed.)

It is for the judge to say whether a publication is capable of the meaning ascribed to it, but for the jury to decide whether it actually has that meaning. (*Blagg v. Sturt*, 10 Q. B. 899.)

If the matter stated by way of inducement be wholly impertinent and foreign to the cause, it may be struck out as surplusage. (See 1 *Chit. on Plead.* 6th Edit., Index, "Slander.")

If part of the indictment be proved, it will in some cases suffice, as, where it stated that the party carried on two trades, it was held sufficient to prove that he carried on one. (*Figgins v. Cogswell*, 3 M. & Sel. 369; *May v. Brown*, 3 B. & C. 113; 4 D. & R. 670, S. C.; and see *R. v. Sutton*, 4 M. & Sel. 532.)

The defendant's malicious intent ought to be shown in the indictment; but it is not necessary to use the term maliciously, the word falsely or wrongfully seems sufficient. (See 1 *Saund.* 242 a, n. (2); *Drewe v. Coulton*, 1 East, 563, n. (a); *Johnstone v. Sutton*, 1 T. R. 545.) Intent.

Where there has been no publication of the libel to a third person, or the publication cannot be proved, and the libel has been sent to the prosecutor himself, it is necessary that the indictment should state that the paper was sent to the party libelled, with the intent to provoke him to commit a breach of the peace (see *R. v. Wegener*, 2 Stark. 245); and, if sent to the wife, the indictment should then allege that the defendant did so with intent to disturb the domestic harmony of the parties. (*Ib.*)

The indictment must aver a publication of the libel. (See *Baldwin v. Elphinston*, 2 Bla. Rep. 1037; 1 *Saund.* 242, n. (1); *R. v. Hunt*, 2 Campb. 584; see *R. v. Burdett*, 4 B. & Ald. 95.) But the publication may be collected from the whole of the indictment, and needs not any technical words. (*Baldwin v. Elphinston*, 2 Bla. Rep. 1037.) Publication.

It should be stated that the libel was of and concerning the prosecutor. (*R. v. Marsden*, 4 M. & Sel. 164; *R. v. Jenour*, 7 Mod. 400; *R. v. Burdett*, 4 B. & Ald. 314; *Lowfield v. Baneroff*, 2 Stra. 934.) Concerning whom and what.

Whenever an inducement of extrinsic matter is necessary to constitute the matter libellous, it is requisite to aver that the libel was of and concerning such matter. (*Hawkes v. Hawkey*, 8 East, 427; *Craft v. Boile*, 1 *Saund.* 242, 243, n.)

The libel itself must be set out in its very terms; and merely stating the substance or effect of it will not suffice. (*Wood v. Brown*, 1 Marsh. 522; 6 Tawnt. 169, S. C.; *Blizard v. Kelly*, 3 D. & R. 519; 2 B. & C. 283, S. C.; *Wright v. Clement*, 3 B. & Ald. 503; *Cook v. Cox*, 3 M. & Sel. 110; *R. v. Bear*, 2 Salk. 417; 1 Ld. Raym. 414, S. C.) On an indictment setting forth the offence, according to the tenor and to the The libel itself.

#### 4. The Prosecution of Libellers.

effect following, it was agreed by the Court, that to the effect following were insufficient, vague, and useless words; for the Court must judge of the words themselves; but the words, according to the tenor, do correct the defect, for they import the very words themselves; for the tenor of a thing is the transcript and true copy of it, to which it may be compared; and, therefore, of words spoken there can be no tenor, because there is no written original. (*R. v. Bear*, 2 Salk. 417; 1 *Ld. Raym.* 414, S. C.; *R. v. Drake*, 3 Salk. 225.) So, it is not sufficient to state that the libel was in substance as follows. (*Brewster v. Sewell*, 3 B. & Ald. 303.)

If the libel be written in a foreign language, the original should first be set forth, and then the translation (*Zenobio v. Axtell*, 6 T. R. 162; 1 *Saund.* 242, n. (a) ); and the translation must be proved to be correct. (*R. v. Peltier*, 2 Selw. N. P. 1062, 12th ed.)

The whole of the papers in which the libellous matter is contained need not be set forth; but those parts may be selected which are most offensive; and, if any part qualify the rest, it may be given in evidence (*R. v. Bear*, 2 Salk. 417; 1 *Ld. Raym.* 414, S. C.); and the indictment may state the publication of the libel "amongst other things" (*Vin. Abr. Libel* (E.), pl. 1); and *Abbott, C. J.*, in *Buckingham v. Murray* (2 C. & P. 47), said, "Suppose one part of a libel is stated which has a qualification, and there be another which has not, have you not a right to read that part which does not contain the qualification? If one part of a book cannot be understood without a reference to another, then you must set out both; but, if it is intelligible without, then you need not."—But then the part omitted must not, by its contents, alter the sense of that which is set forth. (*Sir J. Sydenham's case*, Cro. Jac. 407.) And, where a libellous paragraph, as proved, contained two references, by which it appeared to be in fact the language of a third person, speaking of the plaintiff's conduct, and the declaration described the libel as the assertion of the defendant himself, it was held that these omissions altered the sense of the remainder, and that the variance was fatal. (*Cartwright v. Wright*, 5 B. & Ald. 615; 1 D. & R. 230, S. C.; and see *Bell v. Byrne*, 13 East, 554.)

If parts of the publication be selected, they must be set forth thus: "In a certain part of which said — there were and are contained certain false, wicked, malicious, scandalous, seditious, and libellous matters, of and concerning," etc., "according to the tenor and effect following, that is to say,"—"and in a certain other part," etc. etc. (See *Tabart v. Tipper*, 1 Camp. 350.)

#### Innuendoes.

Where the matter written is not in itself obviously libellous, it is necessary to render it so, by explaining its real meaning by an innuendo. The nature and office of an inducement have been already pointed out, ante, p. 342; that of an innuendo is to explain the defendant's meaning by reference to such inducement, or matter previously expressed in the proceedings. (*R. v. Horne*, Coups. 679, 683; *Woolnoth v. Meadows*, 5 East, 463.) An innuendo is only explanatory of matter already expressed, which it applies to the part that is ambiguous; but it neither alters nor enlarges the sense of previous averments. (*R. v. Greepe*, 2 Salk. 513; 1 *Ld. Raym.* 256, S. C.; 1 *Saund.* 243, n. (4), S. C.; 1 *Chit. Pl.* 6th edit. 437.)

Where an innuendo gives a more extensive construction to the meaning of the words than their natural meaning in common parlance imports, the innuendo is bad, unless it is duly connected with some introductory averment in the indictment, to explain and warrant the larger meaning thus given to the words. (*Alexander v. Angle*, 1 C. & J. 143; 1 *Tyrw. Rep.* 9; 7 *Bing.* 119, S. C.)

But, where the words of themselves are libellous, and there is no occasion whatever for an innuendo, and the innuendo is not connected with any previous averment used to explain the words, it may be rejected as

surplusage. (*Roberts v. Camden*, 9 East, 93; *Cowp.* 175; *Woolnoth v. Meadows*, 5 East, 463; *Harvey v. French*, 2 Tyr. 585; 1 C. & M. 11; 2 M. & Scott, 591, S. C. See *Williams v. Stott*, 1 C. & M. 675.)

4. *The Prosecution of Libellers.*

#### 4. PLEA TO.

The ordinary plea, as in other criminal prosecutions, is not guilty.

(4.) The plea.

The 6 & 7 Vict. c. 96, s. 6, enacts, "That on the trial of any indictment or information for a defamatory libel, the defendant having pleaded such plea as hereinafter mentioned, the truth of the matters charged may be inquired into, but shall not amount to a defence, unless it was for the public benefit that the said matters charged should be published; and that to entitle the defendant to give evidence of the truth of such matters charged as a defence to such indictment or information it shall be necessary for the defendant, in pleading to the said indictment or information, to allege the truth of the said matters charged in the manner now required in pleading a justification to an action for defamation, and further to allege that it was for the public benefit that the said matters charged should be published, and the particular fact or facts by reason whereof it was for the public benefit that the said matters charged should be published, to which plea the prosecutor shall be at liberty to reply generally, denying the whole thereof; and that, if after such plea the defendant shall be convicted on such indictment or information, it shall be competent to the Court, in pronouncing sentence, to consider whether the guilt of the defendant is aggravated or mitigated by the said plea, and by the evidence given to prove or to disprove the same: Provided always, that the truth of the matters charged in the alleged libel complained of by such indictment or information shall in no case be inquired into without such plea of justification: Provided also, that in addition to such plea it shall be competent to the defendant to plead a plea of not guilty: Provided also, that nothing in this Act contained shall take away or prejudice any defence under the plea of not guilty which it is now competent to the defendant to make under such plea to any action or indictment or information for defamatory words or libel."

Truth of libel pleadable.

Proviso as to plea of not guilty in civil and criminal proceedings.

This section applies only to libels of a private and personal character, and not to seditious or blasphemous libels; and, on a trial for the latter, therefore, it is not competent to the defendant to give in evidence the truth of the libel, either in justification or excuse of his having published it. (*Reg. v. Duffy*, 2 Cox Crim. Cas. 45.)

If the defendant pleads the truth of the libel, and fails to prove the truth of all the imputations, the jury must of necessity find a verdict for the Crown, although they may think that some of the imputations are proved; and the Court, in giving judgment, is bound to consider whether the defendant's guilt is aggravated or mitigated by the plea, and by the evidence given to prove or to disprove it, and to form its own conclusion on the whole case. (*Reg. v. Newman*, 1 E. & B. 558.)

#### 5. EVIDENCE TO SUPPORT THE PROSECUTION.

The necessary evidence in support of, or in defence to, a prosecution for a libel, may in a great part be collected from the preceding observations. As to the requisites of the offence itself, see *ante*, 331.

(5.) The evidence.

The defendant has, it seems, a right to have the whole of the publication read, from which the passages charged are extracts. (*Cook v. Hughes*, R. & M. 112.) And it has been held, that, in an action for a libel contained in a newspaper, the defendant has a right to have read, as part of the plaintiff's case, another part of the same newspaper re-

Defendant's right to have whole publication read.

#### 4. *The Prosecution of Libellers.*

Introductory statement.

Where libel itself is evidence.

ferred to in the libel complained of. (*Thornton v. Stephen*, 2 *Moo. & Rob.* 45.)

It seems that statements made in a libel have the effect of dispensing with proof by the prosecutor of facts so stated, if they become necessary to support the prosecution. (*Jones v. Stevens*, 11 *Price*, 235.) Therefore, when in an action for a libel on the plaintiff in his office of overseer of a common field, charging him with embezzlement, or not giving a proper account of the public property, the plaintiff proved the libel, and that he was overseer; and it appeared from the testimony of his own witnesses, that he was not entrusted, as such overseer, with the receipt of money, or that any particular confidence was necessarily reposed in him by virtue of his employment, which appeared to be a somewhat humble one; and it was objected that he should have proved that it was an office of trust and confidence as alleged, and that, therefore, the action could not be supported; it was held, that, as the libel, in its terms, imported that it was an office of trust and confidence, and charged a fraudulent abuse of it, it was, therefore, not necessary to give any proof of the allegation in the declaration. (*Bagnall v. Underwood*, 11 *Price*, 621.) So, in a declaration for a libel published concerning the plaintiff as envoy of the state of Chili, it was alleged, by way of inducement, that the plaintiff was the envoy appointed by the state of Chili, and it was held, that the libel, on the face of it, sufficiently admitted Chili to be a state, and the plaintiff to be envoy of that state. (*Yrisarri v. Clement*, 11 *Moore*, 308; 3 *Bing.* 432; 2 *C. & P.* 223.) So, where in a declaration for a libel, it was averred that the plaintiff, before, etc., was lawfully possessed of a certain message with the appurtenances, called or known by the names of the Camden Arms Tavern, etc., and had before, etc., sold the same to the defendant, and the libel stated, "He, plaintiff, obtained £500 from me for the goodwill of the Camden Arms," etc., it was held, that the words sufficiently admitted the possession by plaintiff. (*Gould v. Hulme*, 3 *C. & P.* 625.)

If a letter of the defendant's is read, which refers to an account of the transaction the libel relates to, which has appeared in a newspaper, that newspaper may be given in evidence. (*Weaver v. Lloyd*, 1 *C. & P.* 296; 4 *D. & R.* 230; 2 *B. & C.* 678, 8. *C.*)

Official situation.

If the libel reflect on the character of a public officer or professional man, as such, it is not in general necessary to prove his appointment to the office, or admission to the profession, because that is in almost all cases either directly or impliedly admitted by the libel itself. (See *Berryman v. Wise*, 4 *T. R.* 366; *Smith v. Taylor*, 1 *B. & P.*, *N. R.* 196, 208; *Jones v. Stevens*, 11 *Price*, 235; *Pearce v. Whale*, 5 *B. & C.* 38; 7 *D. & R.* 512.) Proof that he was in the habit of acting as such officer or professional man would in that case be sufficient; but, if the effect of the libel be to charge the prosecutor with having acted as such officer or professional man without a legal appointment, as, for instance, if a man libel a physician by calling him a quack, it seems necessary to prove the appointment or admission. (See *Smith v. Taylor*, *supra*; *Yrisarri v. Clement*, *supra*; *R. v. Sutton*, 4 *M. & Sel.* 548. And see tit. "Evidence," Vol. II.)

Malice.

Express malice need not be proved, see *ante*, 331.

Evidence of the defendant's having published other copies of the same libel (*Plunkett v. Cobbett*, 5 *Esp.* 136), or other libels (*R. v. Pearce, Peake*, 106), provided they expressly refer to the subject of the libel set out in the indictment (*Finnerty v. Tipper*, 2 *Camp.* 72), is receivable, in order to prove the malicious or seditious intent.

If a letter contain matter libellous in itself and requiring no explanation, although the letter be not a privileged communication, letters subsequently written and actionable in themselves may be given in evidence to show the malice which dictated the first letter. (*Pearson v. Le Maître*,

12 L. J., N. S. 253; *Darby v. Ouseley*, 1 H. & N. 1; *Barrett v. Long*, 3 H. L. Cas. 395.)

In an action for libel against the publisher of a magazine, evidence of the writer's personal malice against the plaintiff is inadmissible. (*Robertson v. Wyld*, 2 Moo. & Rob. 101.)

A letter written to the defendant, containing a statement of the facts upon which he founded his charges, is receivable in evidence on his behalf, to show the *bona fides* with which he acted. (*Blackburn v. Blackburn*, 1 M. & P. 33, 63; 4 Bing. 395; 3 C. & P. 146, S. C.)

As to what amounts to a publication of a libel, see *ante*, 338. The publication must be proved to have taken place in the county in which the venue is laid.

If a letter containing a libel have the post-mark on it, this is *prima facie* evidence of its having been published. (*Shipley v. Todhunter*, 7 C. & P. 680.)

As to the proof of publication in a newspaper, see tit. "Newspapers," *post*.

By the 6 & 7 Vict. c. 96, s. 7, "Whosoever, upon the trial of any indictment or information for the publication of a libel, under the plea of not guilty, evidence shall have been given which shall establish a presumptive case of publication against the defendant by the act of any other person by his authority, it shall be competent to such defendant to prove that such publication was made without his authority, consent, or knowledge, and that the said publication did not arise from want of due care or caution on his part."

Defendant cannot prove under this section that a similar libel had previously appeared in another publication, and been brought to the prosecutor's knowledge, and that he had taken no proceedings against the publisher. (*Reg. v. Newman*, 1 E. & B. 268; *Deurs. C. C.* 85.)

## 6. THE TRIAL.

A great alteration took place, many years ago, in the trials for libels. It had been held, in many cases, that the facts of writing, printing, or publishing, and the truth of the innuendoes inserted in the proceedings, were the only matters to be submitted to the consideration of the jury. (*R. v. Clerk*, 1 Barn. 304; *Udall's case*, 1 How. St. Tri. 1289; *R. v. Withers*, 3 T. R. 428; *R. v. Woodfall*, 5 Burr. 2661.)

But by the 32 Geo. 3, c. 60, s. 1, after reciting that, "doubts have arisen whether on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the King and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict upon the whole matter in issue," it is enacted "that, on every such trial, the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information; and shall not be required or directed by the Court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information."

Sect. 2. "On every such trial, the Court or judge before whom such indictment or information shall be tried, shall, according to their or his discretion, give their or his opinion and directions to the jury on the matter in issue between the King and the defendant or defendants, in like manner as in other criminal cases."

## 4. The Prosecution of Libellers.

### Publication.

### In newspapers.

Evidence to rebut *prima facie* case of publication by an agent.

### (6.) The trial.

Of the power of a jury in cases of libel.

32 Geo. 3, c. 60.



4. *The Prosecution of Libellers.*

Sect. 3. "Nothing herein contained shall extend, or be construed to extend, to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases."

Sect. 4. "In case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment, on such ground and in such manner as by law he or they might have done before the passing of this Act; anything herein contained to the contrary notwithstanding."

Mr. *Starkie*, in his treatise on Evidence, makes the following observation on the effect of this statute:—"Whether a particular publication be so far noxious in its bearing and tendencies as to amount in the abstract to a libel, is a pure question of law, just as much as it is a question of law what will constitute an assault. If the publication, in consideration of law, be libellous, then it is a question of fact for the jury whether it was wilfully and maliciously published; subject, however, to the ordinary presumption of law, that, in the absence of proof to the contrary, a man intends that which is the natural consequence of the means which he employs. It follows, that neither the jury nor the parties have a right to expect from the Court any specific and direct opinion upon the whole of the case, or any other than that which is ordinarily given, at the discretion of the Court, to the jury, in parallel cases, with respect to the verdict which they ought to find in point of law, as dependent and contingent upon their conclusions in point of fact, drawn from the alleged libel itself and all the circumstances of the case, as to the meaning, motives, and intention of the defendant." (*Starkie on Evid. Part. 1* V. 882. And see *R. v. Holt*, 5 T. R. 436; *R. v. Burdett*, 4 B. & Ald. 95; 1 Saund. 132 b, n. (k).)

The judge is not bound to state to the jury, as matter of law, whether the publication complained of be a libel or not; but the proper course is for him to define what is a libel in point of law, and to leave it to the jury to say whether the publication in question falls within that definition; and, as incidental to that, whether it is calculated to injure the character of the plaintiff. (*Parmiter v. Coupland*, 6 M. & W. 105.)

7. COSTS ON PROSECUTION.

(7.) Costs.  
Defendant entitled to, on acquittal of a private libel.

By the 6 & 7 Vict. c. 96, s. 8, "In the case of any indictment or information by a private prosecutor for the publication of any defamatory libel, if judgment shall be given for the defendant, he shall be entitled to recover from the prosecutor the costs sustained by the said defendant by reason of such indictment or information; and that, upon a special plea of justification to such indictment or information, if the issue be found for the prosecutor, he shall be entitled to recover from the defendant the costs sustained by the prosecutor by reason of such plea, such costs so to be recovered by the defendant or prosecutor respectively to be taxed by the proper officer of the Court before which the said indictment or information is tried."

The defendant, having recovered a verdict and judgment, is entitled to costs, although the only plea is not guilty, and although the judge has certified under the 4 & 5 W. & M. c. 18, s. 2, that there was reasonable cause for exhibiting the information. (*Reg. v. Latimer*, 15 Q. B. 1077.) The Court of Queen's Bench has no jurisdiction to review the taxation of costs where the indictment was tried on the Crown side at the assizes. (*Reg. v. Newhouse*, 22 L. J., Q. B. 127.)

As to costs in general, see *tit. "Costs," Vol. I.*

8. PUNISHMENT FOR LIBEL, SEIZURE OF COPIES, ETC.

(8.) The punishment.  
Penalties against blasphemy.

By the 9 & 10 Will. 3, c. 32, reciting, "Whereas many persons have, of late years, openly avowed and published many blasphemous and impious opinions, contrary to the doctrines and principles of the Christian

religion, greatly tending to the dishonour of Almighty God, and which may prove destructive to the peace and welfare of this kingdom; wherefore, for the more effectual suppressing of the said detestable crimes," it is enacted, "that, if any person or persons, having been educated in, or at any time having made profession of, the Christian religion within the realm, shall by writing, printing, teaching, or advised speaking [deny any one of the persons in the Holy Trinity to be God](a), assert or maintain that there are more Gods than one, or shall deny the Christian religion to be true, or the Holy Scriptures of the Old and New Testament to be of divine authority, and shall, upon indictment or information in any of his Majesty's Courts at Westminster, or at the assizes, be thereof lawfully convicted by the oath of two or more credible witnesses, such person or persons, for the first offence, shall be adjudged incapable and disabled in law, to all intents and purposes whatsoever, to have or enjoy any office or offices, employment or employments, ecclesiastical, civil, or military, or any part in them, or any profit or advantage appertaining to them or any of them; and, if any person or persons so convicted as aforesaid shall, at the time of his or their conviction, enjoy or possess any office, place, or employment, such office, place, or employment shall be void, and is hereby declared void. And, if such person or persons shall be a second time lawfully convicted as aforesaid of all or any of the aforesaid crime or crimes, that then he or they shall from henceforth be disabled to sue, prosecute, plead, or use any action or information, in any Court of law or equity, or to be guardian of any child, or executor or administrator of any person, or capable of any legacy or deed of gift, or to bear any office, civil or military, or benefice ecclesiastical, for ever, within this realm, and shall also suffer imprisonment for the space of three years, without bail or mainprize, from the time of such conviction."

4. *The Prosecution of Libellers.*

Sect. 2 provides and enacts, "That no person shall be prosecuted by virtue of this Act for any words spoken, unless the information of such words shall be given upon oath before one or more justice or justices of the peace within four days after such words spoken, and the prosecution of such offence be within three months after such information."

Limitations of prosecutions under Act.

Sect. 3 provides and enacts, "That any person or persons convicted of all or any of the aforesaid crime or crimes in manner aforesaid, shall, for the first offence (upon his, her, or their acknowledgment and renunciation of such offence or erroneous opinions, in the same Court where such person or persons was or were convicted as aforesaid, within the space of four months after his, her, or their conviction), be discharged from all penalties and disabilities incurred by such conviction, anything in this Act contained to the contrary thereof in anywise notwithstanding."

Relief from penalties.

This statute of the 9 & 10 Will. 3 has not altered the common law as to the offence of blasphemy, but only given a cumulative punishment. It is, therefore, still an offence at the common law to publish a blasphemous libel. (*R. v. Richard Carlile*, 3 B. & Ald. 161; *Reg. v. Hetherington*, 5 Jur. 529.)

The statutes do not alter the offence at common law.

It seems that the 53 Geo. 3, c. 160 (b), does not alter the common law,

(a) This part of the enactment, as relates to denying the Holy Trinity, is repealed by the 53 Geo. 3, c. 160.

(b) By the 53 Geo. 3, c. 160, intituled, 'An Act to relieve Persons who impugn the Doctrine of the Holy Trinity from certain Penalties,' reciting, that whereas in the nineteenth year of his present Majesty an Act was passed, intituled, 'An Act for the further Relief of Protestant Dissenting Ministers and Schoolmasters,' and

it is expedient to enact as hereinafter provided, it is enacted, "that the provisions of an Act passed in the ninth and tenth years of the reign of King William intituled, 'An Act for the more effectual suppressing Blasphemy and Profaneness,' so far as the same relate to Persons denying as therein mentioned respecting the Holy Trinity, be and the same are hereby repealed.

#### 4. *The Prosecution of Libellers.*

but only removes the penalties imposed by the 9 & 10 Will. 3, c. 32, on persons denying the Trinity, and extends to them the benefits conferred on all other Protestant dissenters by the 1 Will. & M. c. 18, s. 1. (*R. v. Waddington*, 1 B. & Cres. 26.)

Offence not triable at sessions.

The offence of blasphemy, and other offences against religion, are not triable at any quarter session. (5 & 6 Vict. c. 38, s. 1.)

False defamatory libel punishable by imprisonment and fine.

By the 6 & 7 Vict. c. 96, s. 4, "if any person shall maliciously publish any defamatory libel, knowing the same to be false, every such person, being convicted thereof, shall be liable to be imprisoned in the common gaol or house of correction for any term not exceeding two years, and to pay such fine as the Court shall award."

Malicious defamatory libel, by imprisonment or fine.

By sect. 5, "if any person shall maliciously publish any defamatory libel, every such person, being convicted thereof, shall be liable to fine or imprisonment, or both, as the Court may award, such imprisonment not to exceed the term of one year."

Mitigation of.

A defendant has been allowed to prove that he had stopped the sale of a libellous publication, with a view to mitigation of punishment in case of conviction, and to avoid the expense of bringing the fact before the Court by affidavit. (*R. v. Hone, Guildhall, Hilary T.* 1817; 3 *Chit. C. L.* 877, *a.*) But the truth of the libel could not be set up in mitigation before the 6 & 7 Vict. c. 96, s. 6, *ante*, 329. (*R. v. Halpin*, 4 *Man. & R.* 8; 9 *B. & C.* 65, *S. C.*; *R. v. Burdett*, 4 *B. & Ald.* 95.)

Seditious and blasphemous libels.

Court to make order for seizure of copies of libel in possession of persons against whom verdicts shall have been had, etc.

The 60 Geo. 3 & 1 Geo. 4, c. 8, s. 1, reciting, "That it is expedient to make more effectual provision for the punishment of *blasphemous and seditious libels*," enacts "that from and after the passing of this Act [30th December, 1819], in every case in which any verdict or judgment by default shall be had against any person for composing, printing, or publishing any blasphemous libel or any seditious libel, tending to bring into hatred or contempt the person of his Majesty, his heirs or successors, or the regent, or the government and constitution of the United Kingdom as by law established, or either House of Parliament, or to excite His Majesty's subjects to attempt the alteration of any matter in church or state as by law established, otherwise than by lawful means, it shall be lawful for the judge or the Court before whom or in which such verdict shall have been given, or the Court in which such judgment by default shall be had, to make an order for the seizure and carrying away and detaining in safe custody, in such manner as shall be directed in such order, all copies of the libel which shall be in the possession of the person against whom such verdict or judgment shall have been had, or in the possession of any other person named in the order for his use; evidence upon oath having been previously given to the satisfaction of such Court or judge, that a copy or copies of the said libel is or are in the possession of such other person for the use of the person against whom such verdict or judgment shall have been had as aforesaid; and in every such case it shall be lawful for any justice of the peace or for any constable or other peace officer acting under any such order, or for any person or persons acting with or in aid of any such justice of the peace, constable, or other peace officer, to search for any copies of such libel in any house, building, or other place whatsoever, belonging to the person against whom any such verdict or judgment shall have been had, or to any other person so named, in whose possession any copies of any such libel, belonging to the person against whom any such verdict or judgment shall have been had, shall be; and in case admission shall be refused or not obtained within a reasonable time after it shall have been first demanded, to enter by force by day into any such house, building, or place whatsoever, and to carry away all copies of the libel there found, and to detain the same in safe custody until the same shall be restored

under the provisions of this Act, or disposed of according to any further order made in relation thereto."

Sect. 2. "If, in any such case as aforesaid, judgment shall be arrested, or if, after judgment shall have been entered, the same shall be reversed upon any writ of error, all copies so seized shall be forthwith returned to the person or persons from whom the same shall have been so taken as aforesaid, free of all charge and expense, and without the payment of any fees whatever; and in every case in which final judgment shall be entered upon the verdict so found against the person or persons charged with having composed, printed, or published such libel, then all copies so seized shall be disposed of as the Court in which such judgment shall be given shall order and direct."

Sect. 3 empowers the Court of Justiciary in Scotland to make order for seizing copies of libels, etc.

By sect. 4 it was enacted that any person convicted a second time of publishing a blasphemous or seditious libel should, at the discretion of the Court, be adjudged either to suffer such punishment as might by law be inflicted in cases of high misdemeanour, or to be banished from the United Kingdom and all other parts of His Majesty's dominions for such term of years as the Court should order. But this enactment, so far as it related to the sentence of banishment, is repealed by the 11 Geo. 4 & 1 Will. 4, c. 73, s. 1.

Sect. 7. "The clerk of assize, clerk of the peace, or other clerk or officer of the Court having the custody of the records, where any offender shall have been convicted of having composed, printed, or published any blasphemous or seditious libel, shall, upon request of the prosecutor on his Majesty's behalf, make out and give a certificate in writing, signed by him, containing the effect and substance only (omitting the formal part) of every indictment and conviction of such offender, to the justices of assize, oyer and terminer, great sessions, or gaol delivery, where such offender or offenders shall be indicted for any second offence of composing, printing, or publishing any blasphemous or seditious libel; for which certificate six shillings and eightpence, and no more, shall be paid, and which certificate shall be sufficient proof of the conviction of such offender."

Sect. 8. "Any action\* suit which shall be brought or commenced against any justice or justices of the peace, constable, peace officer, or other person or persons, within that part of Great Britain called England, or in Ireland, for anything done or acted in pursuance of this Act, shall be commenced within six calendar months next after the fact committed, and not afterwards; and the venue in every such action or suit shall be laid in the proper county where the fact was committed, and not elsewhere; and the defendant or defendants in every such action or suit may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon; and if such action or suit shall be brought or commenced after the time limited for bringing the same, or the venue shall be laid in any other place than as aforesaid, then the jury shall find a verdict for the defendant or defendants; and in such case, or if the jury shall find a verdict for the defendant or defendants upon the merits, or if the plaintiff or plaintiffs shall become nonsuit, or discontinue his, her, or their actions after appearance, or if, upon demurrer, judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have double costs, which he or they shall and may recover in such and the same manner as any defendant can by law in other cases." See now as to double costs, the 5 & 6 Vict. c. 97, s. 2, *ante*, 172.

Sect. 9 relates to the limitations of actions, etc., in Scotland.

#### 4. *The Prosecution of Libellers.*

Copies of libels so seized to be restored if judgment for defendant; otherwise to be disposed of as Court shall direct.

Second conviction.

Certificate to be given of conviction of former libel.

Limitation of actions.

\* *Sic*.

Venue.

General issue may be pleaded.

Double cost

6. *Forms.*

Sect. 10. Nothing in the Act is to alter the law of Scotland in respect to punishment for libels.

## Newspapers.

As to the penalty for printing or publishing any seditious matter under colour of its having been printed in a foreign paper, see tit. "*Newspapers*," *post*.

## V. Publishing or threatening to publish, etc., a Libel to extort Money.

Publishing or threatening to publish a libel, or proposing to abstain from publishing anything, with intent to extort money, punishable by imprisonment and hard labour.

The 6 & 7 Vict. c. 96, s. 3, enacts "that if any person shall publish or threaten to publish any libel upon any other person, or shall directly or indirectly threaten to print or publish, or shall directly or indirectly propose to abstain from printing or publishing, or shall directly or indirectly offer to prevent the printing or publishing, of any matter or thing touching any other person, with intent to extort any money or security for money, or any valuable thing from such or any other person, or with intent to induce any person to confer or procure for any person any appointment or office of profit or trust, every such offender, on being convicted thereof, shall be liable to be imprisoned, with or without hard labour, in the common gaol or house of correction, for any term not exceeding three years: Provided always, that nothing herein contained shall in any manner alter or affect any law now in force in respect of the sending or delivery of threatening letters or writings."

## VI. *Forms.*

(1.) Warrant to apprehend for a libel.

The warrant in the case of *Butt v. Conant* (1 B. & B. 548; 4 Moore, 195, S. C. ante, 340), dated 6th March, 1817, at the public office, Bow Street, was directed—"To all constables and others his Majesty's officers of the peace, whom it may concern" [commanding them to take and bring before the defendant, or some other of his Majesty's justices of the peace, the body of the plaintiff], "*to answer all such matters or things as, on his Majesty's behalf, shall on oath be objected against him, for that he, on the 5th March instant, did publish, and cause to be published, a certain wicked, scandalous, and malicious libel, imputing the crime of robbery to Edward Lord Ellenborough, Lord Chief Justice of his Majesty's Court of King's Bench; and another wicked, scandalous, and malicious libel, imputing to Robert Henry Lord Castlereagh, that he had stated a gross falsehood to the House of Commons, to answer his own purposes; and to the said Edward Lord Ellenborough, that he had unjustly convicted the plaintiff, to make money of him; against the peace of our said lord the King, his crown and dignity.*"

(2.) Commitment for blasphemous libel.

[Commencement as usual.] *that the said C. D. on, etc., at, etc., unlawfully and wickedly did compose, print, and publish a certain scandalous, impious, blasphemous, and profane libel, of and concerning the Holy Scriptures and the Christian religion. And you the said keeper, etc.* [Conclude as usual.]

(3.) Commitment for a seditious libel.

[Commencement as usual.] *on the* \_\_\_\_\_ *day of* \_\_\_\_\_, A.D. \_\_\_\_\_, *at the parish of* \_\_\_\_\_, *in the said county, wickedly, maliciously, and seditiously did write and publish a certain false, wicked, malicious, scandalous, and seditious libel of and concerning our sovereign*

*lady the now Queen and her government. And you, the said keeper, etc. [Conclude as usual.]*

6. *Forms.*

(Commencement as usual.) *on the*                      *day of*                      , A D.,  
*at the parish of*                      , *in the said county, wickedly, maliciously, and*  
*seditiously, in the presence and hearing of divers liege subjects of our sovereign*  
*lady the now Queen, did publish, utter, pronounce, and declare certain scan-*  
*dalous, wicked, malicious, and seditious words, of and concerning our said lady*  
*the Queen and her government. And you, the said keeper, etc. [Conclude as*  
*usual.]*

(4.) Commitment  
for seditious  
words.

— } *The jurors for our lady the Queen upon their oath present, that*  
*to wit. } C. D., late of the parish of*                      , *in the county of*  
*labourer, being a wicked and evil-disposed person, and disregarding the laws*  
*and religion of the realm, and wickedly and profanely devising and intending*  
*to bring the Holy Scriptures and the Christian religion into disbelief and con-*  
*tempt among the people of this kingdom, on the*                      *day of*  
*in the*                      *year of the reign of our lady the now Queen Victoria,*  
*at the parish aforesaid, in the county aforesaid, unlawfully and wickedly*  
*did compose, print, and publish, and cause and procure to be composed,*  
*printed, and published, a certain, scandalous, impious, blasphemous, and*  
*profane libel, of and concerning the Holy Scriptures and the Christian*  
*religion, in one part of which said libel there were and are contained, amongst*  
*other things, certain scandalous, impious, blasphemous, and profane matters*  
*and things, of and concerning the Holy Scriptures and the Christian religion,*  
*according to the tenor and effect following: that is to say [set out the libellous*  
*passage verbatim; and if there be another such passage in another part of the*  
*libel, state it thus: "and in another part thereof, there were and are contained*  
*amongst other things, certain other scandalous, impious, blasphemous, and*  
*profane matters and things, of and concerning the said Holy Scriptures and*  
*the Christian religion, according to the tenor and effect following; that is to*  
*say," and setting it forth conclude thus]: To the evil example of all others,*  
*and against the peace of our lady the Queen, her crown and dignity.*

(5.) Indictment  
for blasphemous  
libel.

— } *The jurors for our lady the Queen upon their oath present, that A. O.,*  
*to wit. } late of the parish of*                      , *in the county of*                      [gentle-  
*man], not having the fear of God before his eyes, but moved by the instigation*  
*of the devil, and falsely and maliciously contriving and intending to bring our*  
*said lady the Queen into hatred and infamy amongst her subjects, and to move*  
*sedition amongst the subjects of our said lady the Queen, did, on the*  
*day of*                      , *in the*                      *year of the reign of our lady the*  
*now Queen Victoria, with force and arms, at the parish aforesaid, in the county*  
*aforesaid, falsely, seditiously, and maliciously write and publish, and cause to*  
*be written and published, a certain false, seditious, and scandalous libel, in-*  
*tituled, etc.: in which said libel are contained, amongst other things, divers*  
*false, seditious, scandalous, and malicious matters, according to the tenor*  
*following, to wit,*                      . *And in another part of the same libel are*  
*contained divers other false, seditious, scandalous, and malicious matters,*  
*according to the tenor following, to wit,*                      ; *to the evil example of*  
*all others, and against the peace of our said lady the Queen, her crown and*  
*dignity.*

(6.) Indictment  
for a seditious  
libel.

— } *The jurors for our lord the King upon their oath present, that J. S., late*  
*to wit. } of the parish of B., in the county of M., being a wicked, malicious, se-*  
*ditionous, and ill-disposed person, and wickedly, maliciously, and seditiously*  
*contriving and intending the peace of our said lord the King and this kingdom*  
*of England to disquiet and disturb, and the liege subjects of our said lord the*

(7.) Indictment  
for seditious  
words.

6. *Forms.*

*King to incite and move to the hatred and dislike of the person of our said lord the King; and to scandalize and vilify the colonels and other officers of the guards of our said lord the King, on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, in the* \_\_\_\_\_ *year of the reign of our sovereign lord the King, with force and arms, at the parish aforesaid, in the county aforesaid, in the presence and hearing of divers liege subjects of our said lord the King, wickedly, maliciously, and seditiously did publish, utter, pronounce, and declare with a loud voice, of and concerning our said lord the King, and of and concerning the colonels and other officers of the guards of our said lord the King, these English words following, that is to say: "The colonels and the rest of the officers (meaning the colonels and officers of the guards of our said lord the King) are a company of rogues and villains; for their business is to uphold their master (meaning our said lord the King), who (meaning our said lord the King) is a villain and a rogue, and never kept his word in anything he said:" to the great scandal of our said lord the King, and of the colonels and other officers of the guards of our said lord the King, in contempt of our said lord the King, in open violation of the laws of this kingdom, to the evil and pernicious example of all others, and against the peace of our said lord the King, his crown and dignity.*

## (8.) Indictment for publishing obscene prints.

\_\_\_\_\_ } *The jurors for our lady the Queen upon their oath present, that C. D., to wit. } late of the parish of* \_\_\_\_\_ *, in the county of* \_\_\_\_\_ *, [labourer], being a person of such wicked, depraved, and abandoned mind and disposition, and intending to debauch the morals of the subjects of our lady the Queen, to wit, on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, in the* \_\_\_\_\_ *year of the reign of our lady the now Queen Victoria, at the parish aforesaid, in the county aforesaid, unlawfully, wickedly, deliberately, and advisedly, did utter and publish divers, to wit, six obscene, filthy, and indecent prints, representing men and women in attitudes, situations, and practices of great and scandalous obscenity, lewdness, and indecency, to the great scandal and subversion of religion and good order, to the corruption of the morals of the said subjects, to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.*

## (9.) Commitment for a libel on an individual.

(Commencement as usual.) *on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, A.D.* \_\_\_\_\_ *, at the parish of* \_\_\_\_\_ *, in the said county, unlawfully, wickedly, and maliciously did compose and publish a certain false, scandalous, malicious, and defamatory libel, containing divers false, scandalous, and malicious matters and things of and concerning A. B. And you, the said keeper, etc. [Conclude as usual.]*

## (10.) Indictment for writing and sending a libellous letter to prosecutor.

\_\_\_\_\_ } *The jurors for our lady the Queen upon their oath present, that J. F., to wit. } late of the parish of* \_\_\_\_\_ *, in the county of* \_\_\_\_\_ *, [labourer], wickedly, maliciously, and unlawfully, contriving, and intending to injure and defame T. P., and to bring him into contempt, hatred, infamy, and disgrace, and to provoke and incite him to break the peace of our lady the Queen, on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *, in the* \_\_\_\_\_ *year of the reign of our lady the now Queen Victoria, to wit, at C., in the county of M., did compose and publish a certain false, scandalous, malicious, defamatory, and libellous writing of and concerning the said T. P. [in the form of a letter addressed and directed to the said T. P.], and which said writing then and there contained the following, false, scandalous, malicious, defamatory, and libellous matter of and concerning the said T. P., that is to say, "Sir (meaning the said T. P.), knowing you, etc. [here set out the whole letter with innuendoes. Great care must be observed that the letter be correctly set forth.]*

*And the jurors aforesaid, upon their oath aforesaid, do further present that the said J. F. contriving and intending as aforesaid, afterwards, to wit, on the said* \_\_\_\_\_ *day of* \_\_\_\_\_ *, in the* \_\_\_\_\_ *year of the*

reign aforesaid, at N. aforesaid, in the county aforesaid, unlawfully, wickedly, and maliciously did send, and cause to be sent, to the said T. P., and did thereby then and there unlawfully, wickedly, and maliciously publish, and cause to be published, the said false, scandalous, malicious, defamatory, and libellous writing, to the great damage, scandal, infamy, and disgrace of the said T. P., to the evil and pernicious example of all others, in contempt of our said lady the Queen and her laws, and against the peace of our said lady the Queen, her crown and dignity.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said J. F. further contriving and intending as aforesaid, on the said day of , in the year, etc., at N. etc., aforesaid, of his great hatred, malice, and ill will towards the said T. P., unlawfully, wickedly, and maliciously did publish, and cause to be published, a certain other false, scandalous, malicious, and defamatory libel of and concerning the said T. P., containing therein, amongst other things, the false, scandalous, malicious, defamatory, and libellous matter following, of and concerning the said T. P., that is to say, etc. [here set out the libellous part of the libel]; thereby then and there meaning that [here insert an innuendo of the meaning of the letter, if necessary], to the great damage, scandal, infamy, and disgrace of the said T. P., to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.

Second count, for publishing part of letter generally.

And the jurors aforesaid, on their oath aforesaid, do further present, that the said C. D., again unlawfully, wickedly, and maliciously devising and intending to injure, defame, and vilify the said A. B., heretofore, to wit, on the day of , in the year of the reign aforesaid, at the parish of , in the county aforesaid, unlawfully, wickedly, and maliciously did publish, and cause and procure to be published, a certain scandalous and libellous picture of and concerning the said A. B., with divers figures and images therein, and, amongst others, certain figures and images denoting and representing, and intending to denote and represent [the devil pursuing the said A. B. towards a gallows, and towards a certain fire intended to represent hell], and the said picture being then and there intended to represent that [the said A. B. had been and was guilty of misconduct and crime, deserving punishment by hanging on a gallows, and of punishment after death]; and that the said C. D. the said scandalous and libellous picture, afterwards, to wit, on the said day of , in the year aforesaid, and on divers other days and times, as well before as afterwards, at, etc., aforesaid, to divers liege subjects of our said lady the Queen then and there present, unlawfully, wickedly, and maliciously, did openly shew and exhibit, and cause to be shewn and exhibited, to the great scandal and disgrace of the said A. B., to the evil example of all others, and against the peace of our said lady the Queen, her crown and dignity.

(11.) Count for a libel by a picture.

See a form of Indictment for a libel for hanging a man in effigy. (*Jerv. Arch. C. L.* 9th ed. 627.)

## Libraries, Public.

THE 18 & 19 Vict. c. 70, entitled "An Act for Further Promoting the Establishment of Free Public Libraries and Museums in Municipal Towns, and for Extending it to Towns governed under Local Improvement Acts, and to Parishes," after reciting that it is expedient to amend and extend the "Public Libraries Act, 1850," enacts as follows:—



*Libraries,  
Public.*

13 & 14 Vict. c.  
65, repealed.

Short title of  
Act.

Interpretation of  
terms.

"Parish."

"Vestry."

"Ratepayers."

"Overseers of  
the poor."

"Board."

"Improvement  
rates."

Town councils of  
certain boroughs  
may adopt this  
Act if deter-  
mined by inha-  
bitants.

1. The "Public Libraries Act, 1850," is hereby repealed; but such repeal shall not invalidate or affect anything already done in pursuance of the same Act, and all libraries and museums established under that Act or the Act thereby repealed (*a*), shall be considered as having been established under this Act, and the council of any borough which may have adopted the said Act of one thousand eight hundred and fifty, or established a museum under the Act thereby repealed (*a*), shall have and may use and exercise all the benefits, privileges, and powers given by this Act; and all moneys which have been borrowed by virtue of the said repealed Acts or either of them, and still remaining unpaid, and the interest thereof, shall be charged on the borough rates, or a rate to be assessed and recovered in the like manner as a borough rate to be made by virtue of this Act.

2. In citing this Act for any purposes whatever it shall be sufficient to use the expression "The Public Libraries Act, 1855."

3. In the construction of this Act the following words and expressions shall, unless there be something in the subject or context repugnant to such construction, have the following meanings assigned to them respectively; that is to say, "parish" shall mean every place maintaining its own poor; "vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under the Act of the fifty-ninth year of King George the Third, chapter twelve, or under the Act of the first and second years of King William the Fourth, chapter sixty, or under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry; "ratepayers" shall mean all persons for the time being assessed to rates for the relief of the poor of the parish; "Overseers of the Poor" shall mean also any persons authorized and required to make and collect the rate for the relief of the poor of the parish, and acting instead of overseers of the poor; "board" shall mean the commissioners, trustees, or other body of persons, by whatever name distinguished, for the time being in office and acting in the execution of any improvement Act, being an Act for draining, cleansing, paving, lighting, watching, or otherwise improving a place, or for any of those purposes; "improvement rates" shall mean the rates, tolls, rents, income, and other moneys whatsoever which, under the provisions of any such improvement Act, shall be applicable for the general purposes of such Act.

4. The mayor of any municipal borough the population of which, according to the then last census thereof, shall exceed five thousand persons, shall, on the request of the Town Council, convene a public meeting of the Burgesses of the borough, in order to determine whether this Act shall be adopted for the municipal borough, and ten days' notice at least of the time, place, and object of the meeting shall be given by affixing the same on or near the door of every church and chapel within the borough, and also by advertising the same in one or more of the newspapers published or circulated within the borough, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds of such persons as aforesaid then present shall determine that this Act ought to be adopted for the borough, the same shall thenceforth take effect and come into operation in such borough, and shall be carried into execution in accordance with the laws for the time

(a) The "Act thereby repealed" is the 8 & 9 Vict. c. 43.

being in force relating to the municipal corporation of such borough: provided always, that the mayor, or, in his absence, the chairman of the meeting, shall cause a minute to be made of the resolutions of the meeting, and shall sign the same; and the resolutions so signed shall be conclusive evidence that the meeting was duly convened, and the vote thereat duly taken, and that the minute contains a true account of the proceedings thereat.

By the 29 & 30 Vict. c. 114, s. 3, the public meeting mentioned in sect. 4 of the said "Public Libraries Act, 1855," shall be called either on the request of the town council, or on the request in writing of ten ratepayers residing in the borough.

In boroughs, meeting to be called at the request of ten ratepayers.

By sect. 4, any parish, of whatever population, adjoining any borough, district, or parish which shall have adopted or shall contemplate the adoption of the said "Public Libraries Act, 1855," may, with the consent of more than one-half of the ratepayers thereof present at a meeting to be convened in manner directed by the said Act with reference to meetings of ratepayers, and with the consent also of the town council of such borough, or the board of such district, or the commissioners of such parish, as the case may be, determine that such adjoining parish shall for the purposes of the said Act form part of such borough, district, or parish, and thereupon the vestry of such adjoining parish shall forthwith appoint three ratepayers commissioners for such parish, one-third of whom shall go out of office, and the vacancies be filled up as provided by the said Act with respect to the commissioners of a parish, and such commissioners for the time being shall for the purposes of the said Act be considered as part of such town council, board, or commissioners, as the case may be; and the expenses of calling the meeting, and the proportion of the expenses of such adjoining parish of carrying the said Act into execution, shall be paid out of the poor rates thereof to such person as the commissioners of the said adjoining parish shall appoint to receive the same.

Parishes adjoining a borough, etc., may unite in adopting Act.

5. The majority necessary to be obtained for the adoption of the Act shall be more than one-half of the persons present at the meeting, instead of two-thirds of such persons as now required.

A majority of one-half of the ratepayers may adopt Act.

6. The "Public Libraries Act, 1855," shall be applicable to any borough, district, or parish or burgh, of whatever population.

Act may be adopted whatever amount of population.

By the 18 & 19 Vict. c. 70, s. 5, the expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in such borough, may be paid out of the borough fund, and the council may levy by a separate rate, to be called a library rate, to be made and recoverable in the manner hereinafter provided, all moneys from time to time necessary for defraying such expenses; and distinct accounts shall be kept of the receipts, payments, and liabilities of the council with reference to the execution of this Act.

Expenses of carrying Act into execution in a borough to be paid out of the borough fund.

By the 29 & 30 Vict. c. 114, s. 2, this section, "except so much thereof as relates to keeping distinct accounts, shall be repealed; and the expenses incurred in calling and holding the meeting, whether the said Act shall be adopted or not, and the expenses of carrying the said Act into execution in any municipal borough, may be paid out of the borough rate of such borough, or by and out of a rate to be made and recovered in such borough, in like manner as a borough rate may be made and recovered therein, but the amount so paid in such borough in any one year shall not exceed the sum of one penny in the pound upon the annual value of the property in such borough rateable to a borough rate: Provided always, that nothing in this Act shall interfere with the

Part of sect. 5 of recited Act repealed.

Expenses of executing Act in boroughs to be paid out of borough fund.

*Libraries,  
Public.*

operation of the Act twenty-eighth and twenty-ninth Victoria, chapter one hundred and eight, so far as it relates to the collection of a rate for a public library in the City of Oxford."

Board of any district within limits of any improvement Act may adopt this Act if determined by inhabitants.

By the 18 & 19 Vict. c. 70, s. 6, the board of any district, being a place within the limits of any improvement Act, and having such a population as aforesaid (*a*), shall, upon the requisition in writing of at least ten persons assessed to and paying the improvement rate, appoint a time not less than ten days nor more than twenty days from the time of receiving such requisition for a public meeting of the persons assessed to and paying such rate, in order to determine whether this Act shall be adopted for such district, and ten days' notice at least of the time, place, and object of such meeting shall be given by affixing the same on or near the door of every church and chapel within the district, and also by advertising the same in one or more of the newspapers published or circulated within the district, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds of such persons as aforesaid then present (*b*), shall determine that this Act ought to be adopted for the district, the same shall thenceforth take effect, and come into operation in such district, and shall be carried into effect according to the laws for the time being in force relating to such board.

Expenses of carrying Act into execution by improvement commissioners to be charged on improvement rate.

7. The Expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in any such district, shall be paid out of the improvement rate, and the board may levy as part of the improvement rate, or by a separate rate to be assessed and recovered in like manner as an improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses; and the Board shall keep distinct accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, which accounts shall be audited in the same way as accounts are directed to be audited under the Improvement Act.

Certain parishes may adopt this Act with the consent of two-thirds of the ratepayers.

8. Upon the requisition in writing of at least ten ratepayers of any parish having such a population as aforesaid (*a*), the overseers of the poor shall appoint a time, not less than ten days nor more than twenty days from the time of receiving such requisition, for a public meeting of the ratepayers in order to determine whether this Act shall be adopted for the parish; and ten days' notice at least of the time, place, and object of the meeting shall be given by affixing the same on or near the door of every church and chapel within the parish, and also by advertising the same in one or more of the newspapers published or circulated within the parish, seven days at least before the day appointed for the meeting; and if at such meeting two-thirds of the ratepayers then present (*b*) shall determine that this Act ought to be adopted for such parish, the same shall come into operation in such parish, and the vestry shall forthwith appoint not less than three nor more than nine ratepayers commissioners for carrying the Act into execution, who shall be a body corporate by the name of "The Commissioners for Public Libraries and Museums for the parish of \_\_\_\_\_, in the county of \_\_\_\_\_," and by that name may sue and be sued, and hold and dispose of lands, and use a common seal: Provided always, that in any parish where there shall not be a greater population than eight thousand inhabitants by the then last census, it shall be lawful for any ten ratepayers to deliver a requisition by them signed, and describing their place of residence, to

The vestry to appoint commissioners for carrying the Act into execution, who shall be a body corporate.

(*a*) By the 29 & 30 Vict. c. 114, s. 6, *ante*, 357, the amount of the population is immaterial.

(*b*) By the 29 & 30 Vict. c. 114, s. 5, *ante*, 357, a majority only is required.

the overseers or one of the overseers of the said parish, requiring the votes of the ratepayers at such meeting to be taken according to the provisions of the Act passed in the fifty-eighth year of the reign of King George the Third, chapter sixty-nine (a), and the votes at such meeting shall thereupon be taken according to the provisions of the said last-mentioned Act of Parliament, and not otherwise.

*Libraries,  
Public.*

9. At the termination of every year (the year being reckoned from and exclusive of the day of the first appointment of commissioners) a meeting of the vestry shall be held, at which meeting one-third or as nearly as may be one-third of the commissioners, to be determined by ballot, shall go out of office, and the vestry shall appoint other commissioners in their place, but the outgoing commissioners may be re-elected; and the vestry shall fill up every vacancy among the commissioners, whether occurring by death, resignation, or otherwise, as soon as possible after the same occurs.

One-third of such commissioners to go out of office yearly, and others to be appointed, but those retiring may be re-appointed.

10. The commissioners shall meet at least once in every calendar month, and at such other times as they think fit, at the public library or museum or some other convenient place; and any one commissioner may summon a special meeting of the commissioners by giving three clear days' notice in writing to each commissioner, specifying therein the purpose for which the meeting is called; and no business shall be transacted at any meeting of the commissioners unless at least two commissioners shall be present.

General and special meetings of commissioners.

11. All orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings so entered, and purporting to be so signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any judicial proceeding whatsoever.

Minutes of proceedings of commissioners to be entered in books

12. The commissioners shall keep distinct and regular accounts of their receipts, payments, credits, and liabilities with reference to the execution of this Act, which accounts shall be audited yearly by the poor law auditor, if the accounts of poor rate expenditure of the parish be audited by a poor law auditor, but if not so audited, then by two auditors not being commissioners, who shall be yearly appointed by the vestry, and the auditor or auditors shall report thereon, and such report shall be laid before the vestry by the commissioners.

Distinct accounts to be kept by commissioners, and duly audited.

13. The expenses of calling and holding the meeting of the ratepayers, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in any parish, to such amount as shall be from time to time sanctioned by the vestry, shall be paid out of a rate to be made and recovered in like manner as a poor rate, except that every person occupying lands used as arable, meadow, or pasture ground only, or as woodlands or market gardens, or nursery grounds, shall be rated in respect of the same in the proportion of one-third part only of the full net annual value thereof respectively; the vestry to be called for the purpose of sanctioning the amount shall be convened in the manner usual in the parish; the amount for the time being proposed to be raised for such expenses shall be expressed in the notice convening the vestry, and shall be paid, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same: Provided always, that in the notices requiring the payment of the rate there shall be stated the proportion which the amount to be thereby raised for the purposes of this Act shall bear to the total amount of the rate.

Expenses of executing Act in any parish to be paid out of poor rate.

*Libraries,  
Public.*

Vestries of two or more neighbouring parishes may adopt the Act.

14. The vestries of any two or more neighbouring parishes having according to the then last census, an aggregate population exceeding five thousand persons, may adopt this Act, in like manner as if the population of each of those parishes, according to the then last census, exceeded five thousand, and may concur in carrying the same into execution in such parishes for such time as they shall mutually agree; and such vestries may decide that a public library or museum, or both, shall be erected in any one of such parishes, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually approve; the proportion for each of such parishes of such expenses shall be paid out of the moneys to be raised for the relief of the poor of the same respective parishes accordingly; but no more than three commissioners shall be appointed for each parish; and the commissioners so appointed for each of such parishes shall, in the management of the said public library and museum, form one body of commissioners, and shall act accordingly in the execution of this Act; and the accounts of the commissioners shall be examined and reported on by the auditor or auditors of each of such parishes; and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively in the proportion in which such parishes shall be liable to such expenses.

Rates levied not to exceed one penny in the pound.

15. The amount of the rate to be levied in any borough, district, or parish in any one year for the purposes of this Act shall not exceed the sum of one penny in the pound; and for the purposes of the library rate all the clauses of "The Towns Improvement Clauses Act, 1847" (a), with respect to the manner of making rates, to the appeal to be made against any rate, and to the recovery of rates, shall be incorporated with this Act; and whenever the words "special Act" occur in the Act so incorporated, they shall mean "The Public Libraries Act, 1855;" the accounts of the said board and commissioners respectively, with reference to the execution of this Act, shall at all reasonable times be open, without charge, to the inspection of every person rated to the improvement rate or to the rates for the relief of the poor of the parish, as the case may be, who may make copies of or extracts from such accounts, without paying for the same; and in case the board or the commissioners, or any of them respectively, or any of their respective officers or servants having the custody of such accounts, shall not permit the same accounts to be inspected, or copies of or extracts from the same to be made, every person so offending shall, for every such offence, forfeit any sum not exceeding five pounds.

Accounts of board and commissioners to be open to inspection.

Short title.

Towns Improvement Clauses Act not to apply to boroughs.

16. By s. 1 of the 29 & 30 Vict. c. 114, which may be cited as "The Public Libraries Amendment Act (*England and Scotland*), 1866," and shall be taken to be part of the said "Public Libraries Act, 1855," and shall be construed accordingly, so much of this section as incorporates certain clauses of the "Towns Improvement Clauses Act, 1847," shall, so far as the same relates to or concerns municipal boroughs, be repealed.

A library or museum may be established in connection with any museum or library.

By sect. 10, Wherever a public museum or library has been established under any Act relating to public libraries or museums, or shall hereafter be established under either of the said before-mentioned Acts, a public library or museum, as the case may be, may at any time be established in connection therewith without any further proceedings being taken under the said Acts.

Power to council, etc., to borrow on mortgage.

By the 18 & 19 Vict. c. 70, s. 16, For carrying this Act into execution, the council, board, or commissioners respectively may, with the approval of her Majesty's Treasury (and, as to the commissioners, with

(a) See this Act, Vol. V. tit. "Towns Improvements."

the sanction also of the vestry and the Poor Law Board), from time to time borrow at interest, on the security of a mortgage or bond of the borough fund, or of the rates levied in pursuance of this Act, such sums of money as may be by them respectively required; and the commissioners for carrying into execution the Act of the ninth and tenth years of her Majesty, chapter eighty, may from time to time advance and lend any such sums of money.

17. The clauses and provisions of "The Companies Clauses Consolidation Act, 1845," with respect to the borrowing of money on mortgage or bond, and the accountability of officers, and the recovery of damages and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act.

Provisions of 8 & 9 Vict. c. 16, as to borrowing extended to this Act.

18. The council of any borough and the board of any district respectively may from time to time, with the approval of her Majesty's Treasury, appropriate for the purposes of this Act any lands vested, as the case may be, in a borough, in the mayor, aldermen, and burgesses, and, in a district, in the board; and the council, board, and commissioners respectively may also, with such approval, purchase or rent any lands or any suitable buildings; and the council and board and commissioners respectively may, upon any lands so appropriated, purchased, or rented respectively, erect any buildings suitable for public libraries or museums, or both, or for schools for science or art, and may apply, take down, alter, and extend any buildings for such purposes, and rebuild, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Lands, etc., may be appropriated, purchased, or rented, for the purposes of this Act (a).

19. "The Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act; but the council, board, and commissioners respectively shall not purchase or take any lands otherwise than by agreement.

Provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

20. The council, board, and commissioners aforesaid respectively may, with the like approval as is required for the purchase of lands, sell any lands vested in the mayor, aldermen, and burgesses, or board, or commissioners respectively, for the purposes of this Act, or exchange the same for any lands better adapted for the purposes; and the moneys to arise from such sale, or to be received for equality of exchange, or a sufficient part thereof, shall be applied in or towards the purchase of other lands better adapted for such purposes.

Lands, etc., may be sold or exchanged.

21. The general management, regulation, and control of such libraries museums, and schools for science and art, shall be, as to any borough, vested in and exercised by the council, and as to any district in and by the board, and as to any parish or parishes in and by the commissioners, or such committee as such council or board may from time to time appoint, the members whereof need not be members of the council or board or be commissioners, who may from time to time purchase and provide the necessary fuel, lighting, and other similar matters, books, newspapers, maps, and specimens of art and science, for the use of the library or museum or school, and cause the same to be bound or repaired when necessary, and appoint salaried officers and servants, and dismiss the same, and make rules and regulations for the safety and use of the libraries and museums, and schools, and for the admission of the public.

General management to be vested in council, board, or commissioners.

22. The lands and buildings so to be appropriated, purchased, or rented as aforesaid, and all other real and personal property whatever presented to or purchased for any library or museum established under this Act, or

Property of library, etc., to be vested in council, board, and commissioners respectively.

(a) See *Harrison v. The Mayor of Southampton*, 2 Sm. & G. 414; 23 L. J. Chanc. 919.

*Lighting and Watching of Parishes, etc.* school, shall be vested, in the case of a borough, in the mayor, aldermen, and burgesses, in the case of a district in the board, and in the case of a parish or parishes in the commissioners.

If any meeting determine against adoption of Act, no other meeting to be called for a year.

Act may be adopted in the City of London if two-thirds of persons rated to the consolidated rate, assembled at a public meeting, assent.

23. If any meeting called as aforesaid to determine as to the adoption of this Act for any borough, district, or parish shall determine against the adoption, no meeting for a similar purpose shall be held for the space of one year at least from the time of holding the previous meeting.

24. The lord mayor of the City of *London* shall, on the request of the lord mayor, aldermen, and commons of the City of *London*, in common council assembled, convene a public meeting in manner herein-before mentioned of all persons rated and assessed to the consolidated rate in the City of *London*, in order to determine whether this Act shall be adopted in the said City; and if at such meeting two-thirds of such persons then present shall determine that this Act ought to be adopted for the City of *London*, the same shall thenceforth take effect and come into operation in the City of *London*, and shall be carried into execution in accordance with the laws for the time being in force relating to the City of *London*: Provided always, that the resolution of such public meeting, signed by the lord mayor, shall be reported to the said lord mayor, aldermen, and commons, in common council assembled, and entered on the minutes thereof, and that such entry shall be evidence; the expenses incurred in calling and holding the meeting, whether this Act shall be adopted or not, and the expenses of carrying this Act into execution in the City of *London*, shall be paid out of the consolidated rate, and the commissioners of sewers of the City of *London* may levy a part of the consolidated rate, or, by a separate rate, to be assessed and recovered in like manner as the consolidated rate, all moneys from time to time necessary for defraying such expenses, and distinct accounts shall be kept of the receipts, payments, and liabilities of the said lord mayor, aldermen, and commons with reference to the execution of the Act.

Museums to be free.

25. The admission to all libraries and museums established under this Act shall be open to the public free of all charge.

Extent of Act.

26. This Act shall not extend to *Ireland* or *Scotland*.

## Lighting and Watching of Parishes, etc.

HEREIN—

- I. *Of the Duty, etc., of Watching by Common Law*, p. 363.
- II. *Statutes as to Lighting and Watching*, p. 364.
- III. *The Gas Works Clauses Act* (10 Vict. c. 15), p. 389.
- IV. *The Act for the Regulation of Gas-meters* (22 & 23 Vict. c. 66), p. 399.
- V. *Forms*, p. 408.

## I. The Duty, etc., of Watching at Common Law.

Watching is properly intended of the night, and warding for the day-time. (*Dalt. c. 104.*) Watch and ward.

It seems to be agreed that every inhabitant is bound to keep watch in his turn, or to find another. (2 *Haw. c. 13, s. 4*; *Co. Lit. 70*; *Cro. Eliz. 204.*) By Individuals in general.

But they are not compellable to watch at the will of the constable, but only when their turn cometh; which was the ancient custom at common law. (*Dalt. c. 104.*)

And the watching and warding ought to be by men able of body, and sufficiently weaponed. (*Id.*)

And therefore a woman required to watch may procure one to watch for her. (*Comb. 243.*)

There is a watch that may be kept by the constable, *ex officio*, at all times; as by the 5 *Edw. 3, c. 14*, for night-walkers, and persons suspicious by night or day. (2 *Hale, 97.*) By the constable.

And although a constable be not bound to any precise time for this kind of watch, nor punishable if he omit it, barely for the omission, if he be ready upon occasion to do his office when required in these cases, yet it is in his power to hold such watches as often as he pleases, and it is convenient and justifiable; and herein the watchmen are the ministers and assistants of the constable, and are under the same protection with him, and may act as he doth. (2 *Hale, 97.*)

Yea, it is holden that every private person may, by the common law, arrest any suspicious night-walker, and detain him till he give a good account of himself. (2 *Haw. c. 13, s. 6*; 2 *Inst. 52*; *Lawrence v. Hedger, 3 Taunt. 14*; see also title "*Vagrants*," *Vol. V.*, and tit. "*Arrest*," *Vol. I.*)

There is also another kind of watch, which is by authority of the justices of the peace, which also may be held at any time: and the watch thus appointed hath the same power as either of the former: and this seems to be within the power of any one justice, by the first assignment in the commission; but the safer way and more usual is, by order of sessions. (*Lamb. 186*; 2 *Hale, 97*; *Dalt. c. 104.*) By justices.

If a watchman take any one for suspicion of felony, he may inquire of his good name and fame; and if he find him to be of good name and fame, he may let him go without being guilty of an escape. (*Dalt. c. 159.*) Persons taken by watchmen.

And if a person will not obey the arrest of the watchman, they may levy hue and cry upon him, that he may be taken; or else they may justify to beat him, for that he resisteth the peace and justice of the realm; and may also set him in the stocks for the same until the morning. (*Dalt. c. 104.* See tit. "*Arrest*," *Vol. I.*)

And the watchman may deliver such persons to the constable, or may convey them to a justice to be examined, and to be bound over or committed, until they be acquitted in due manner. (*Id.*)

In 2 *Burr. 864 (R. v. Bootie)* is an indictment against a constable for suffering a street-walker taken up by a watchman to escape.

A watchman hath a double protection of the law: 1st, As an assistant to the constable, when the constable is present, or in the watch; for so every man, who is assisting to the constable in the execution of his office, hath the same protection that the law gives to the constable. 2ndly, Purely as a watchman set by order of law; and the law takes notice of his authority *sub eo nomine*; and, therefore, killing a watchman in execution of his office is murder. (2 *Hale, 98*; 3 *Inst. 52*; *Mackalley's case, 9 Rep. 66.* As to rewards, see tit. "*Rewards*," *Vol. V.*) Indemnity of watchmen.



2. By  
Statute.Punishment for  
not watching.

If any person refuse to watch in his turn at the commandment of the constable, the latter may present the default at the assizes or sessions, or may complain thereof to any justice of the peace, who may bind the offender to the good behaviour, and so over to the next sessions. (*Dalt. c. 104.*) And he may be indicted for the refusal. (2 *Haw. c. 13. s. 4*; see tit. "*Constable*," Vol. I.)

But here it is to be noted, that in *Stretton v. Browne* (*Cro. Eliz. 204*), which Mr. Dalton cites for his authority in this matter, it is not said that the justice may bind him to the good behaviour, but only thus,—that he may inflict punishment upon the refuser.

## II. Lighting and Watching, as regulated by Statute.

As to the powers and duties of the police in the country, see tit. "*Constable*," Vol. I.

In municipal cor-  
porations.

As to watching and lighting in boroughs, etc., under the "Municipal Corporation Act," see "*Corporations*," Vol. I.

In parishes in  
general.

As to the power of local boards to contract for lighting their district, see the 12 & 13 Vict. c. 94, s. 8, tit. "*Local Government*," post.

By 3 & 4 Will. 4,  
c. 90 (a).

By the 3 & 4 Will. 4, c. 90, a variety of provisions is made for the watching and lighting of parishes by the appointment of watchmen, and patrols, etc., who are to be sworn in and have the power of constables; but the Act does not make it compulsory on parishes to adopt its provisions, and if adopted the provisions may be abandoned after three years by a simple majority of the ratepayers; see sect. 15.

Sect. 1 repeals the 11 Geo. 4, c. 27.

By sect. 2, such repeal is not to affect proceedings under that Act previous to its repeal.

By sect. 3, inspectors appointed under the repealed Act are to continue to act until others are appointed.

Act applicable to  
all parishes in  
England and  
Wales.

Sect. 4, "This Act, and the several provisions thereof, shall apply to and may be adopted, under and subject to the regulations herein contained, by all or any or either of the parishes in England and Wales." (See post, ss. 71, 72, and 73.)

On application of  
three rated inha-  
bitants, church-  
wardens to con-  
vene a meeting in  
vestry to deter-  
mine whether the  
provisions of this  
Act shall be  
adopted.

Sect. 5. "From and after the passing of this Act, upon the application in writing of three or more of the ratepayers of any parish, it shall be lawful for the churchwardens thereof (b), and they are hereby required, within ten days after the receipt of such application as aforesaid, to appoint and notify a time and place for a public meeting of the ratepayers of the said parish, for the purpose of determining whether the provisions in this Act contained shall be adopted and carried into execu-

(a) In districts where the Local Government Acts are in force, this Act is superseded (21 & 22 Vict. c. 98, s. 46). By the 5 & 6 Will. 4, c. 62, s. 10, a declaration is substituted for oath, affirmation, or affidavit, whenever any of them are required to be taken by this Act.

(b) In *Reg. v. Kingswinford* (3 E. & B. 689; 23 L. J. Q. B. 337), it was held that the churchwardens of a dis-

trict assigned to a chapel for ecclesiastical purposes under the 1 & 2 Will. 4, c. 38, who had acted for ecclesiastical purposes only, and had not been in the habit of convening meetings for secular purposes, could not call a meeting for the adoption of this Act, and that a resolution for the adoption of the Act passed at a meeting called by such churchwardens was invalid.

tion in the said parish : Provided always that the time appointed for holding the said meeting shall not be less than ten days and not more than twenty-one days from the time of the said application so being delivered to them as aforesaid, and that notification of the time and place of meeting shall be made by forthwith affixing a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to the parochial affairs of any such parish, and also by publication of the same in the parish church or chapel on the Sunday previous to the day appointed for holding such meeting, during or immediately after divine service. (See *post*, "Forms," Nos. 4 and 5. See *post*, sect. 14, as to who are to be deemed "Ratepayers.")

Sect. 6. "That such person as may be elected by the ratepayers present shall preside as chairman (*a*) at such meetings; and that if any controversy shall arise at any such meeting as to the qualification or right of voting, or eligibility of any person claiming to vote, or as to the qualification or eligibility of any candidate, such controversy shall be determined by the chairman presiding at such meeting." (As to the qualification of voter and inspector, see ss. 14, 17.)

Sect. 7. "The chairman who shall preside at any meeting assembled as herein directed shall read or cause to be read the requisition whereupon the meeting shall have been summoned, and shall require the persons assembled thereat to determine by majority of votes, as herein mentioned, whether the provisions of this Act, as herein set forth, shall or shall not be adopted and acted upon within such parish : Provided nevertheless, that it shall be lawful for the majority of the ratepayers present to adjourn such meeting from time to time."

Sect. 8. "If at any such meeting it shall be determined by a majority, consisting of two-thirds (*b*) of the votes of the ratepayers present at such meeting, that the provisions of this Act shall be adopted, then and in such case such provisions shall from thenceforth take effect and come into operation in such parish; and it shall forthwith be determined that a certain number, not being more than twelve nor less than three, inspectors, shall be elected to carry such purposes into effect; and the number of inspectors so determined upon shall be elected in manner herein mentioned." (See *post*, "Forms," Nos. 6, 7, and 8, and sect. 16, *post*.)

Sect. 9. "The ratepayers of such parish shall at their first meeting, or at some adjournment thereof, and so on from time to time in every succeeding year, at a meeting to be called for that purpose, in manner herein directed, fix and determine the total amount of money which the in-

## 2. By Statute.

3 & 4 Will 4,  
c. 90.

Chairman to be elected, who shall determine any controversies.

Chairman to read requisition, and require persons to determine whether Act shall be adopted.

If meeting determine to adopt this Act, the provisions thereof shall thenceforth take effect.

Inhabitants to fix amount of money to be raised yearly.

(*a*) Strictly speaking, only ratepayers have a right to be present at these meetings; but, where the chairman was not a ratepayer, it was held that the resolutions of the requisite majority of the ratepayers were not rendered inoperative by reason of that circumstance. (*Reg. v. Middlesex JJ.*, 22 L. J. M. C. 106.)

(*b*) This majority is required only at the original meeting here mentioned, for determining as to the adoption of the Act, and as to the amount which the inspectors shall have power to call for in any year; a less majority may suffice at other

meetings held subsequently. (See *Beechey v. Quentry*, 10 M. & Wels. 65.) But where at a meeting for determining as to the adoption of the Act, out of thirty-seven ratepayers present, twenty voted for the adoption of the Act, and the remainder abstained from voting and took no part in the proceedings, it was held that the Act was not legally adopted, and that the defect was not cured by the inspectors having acted for a year under its provisions. (*Eynsham case*, 12 Q. B. 398, n.; 18 L. J. Q. B. 210. And see *Gosling v. Veley*, 12 Q. B. 328; 4 H. L. Cas. 679.)

2. By  
Statute.3 & 4 Will. 4,  
c. 90.Sum, how to be  
raised.Poll may be de-  
manded as to  
adoption of Act.Demand of poll  
to be delivered to  
churchwardens.Notice of poll to  
be given by  
churchwardens,  
and affixed on  
door of church,  
etc.

Form of notice.

Form of declara-  
tion.Churchwardens  
to examine the  
votes, and de-  
clare whether  
two-thirds of

spectors shall have power to call for in any one year, in order to carry into effect the provisions of this Act (see *post*, *Form* No. 9) ; such sum to be raised in the manner herein directed, upon the full and fair annual value of all property rateable for the relief of the poor within such parish, such full and fair annual value to be computed according to the last valuation for the time being acted upon in assessing the poor's rate for the said parish : Provided nevertheless, that any five rated inhabitants, qualified to vote as herein mentioned, may, at such meeting, or adjournment thereof, in writing given to the chairman of the said meeting, demand a poll to be taken of the ratepayers qualified to vote upon the question, as to whether this Act and the provisions thereof, or any part thereof, shall be adopted in such parish, and also as to the amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, and which said demand of a poll the said chairman is required forthwith to deliver to the churchwardens of the said parish." (See *post*, *Form* No. 10.)

Sect. 10. "The said churchwardens of the said parish shall, on the first Sunday next after the receipt of such demand of a poll, affix or cause to be affixed a notice on the principal outer door of every parish church or chapel situate within such parish, or on the usual place of affixing notices relating to parochial affairs of any such parish, specifying some day, not earlier than ten days, and not later than twenty-one days, after such Sunday, and at what place or places within the said parish the ratepayers are required to signify their votes for or against the adoption of this Act, or such parts thereof as may have been agreed upon at the said meeting, as well as with respect to the annual amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected as determined at such meeting, which votes shall be received on two successive days, commencing at eight of the clock in the forenoon and ending at four of the clock in the afternoon of each day ; and the said notice shall be to the following effect :—

"The churchwardens of this parish [insert the name of the parish] having received a demand for a poll, duly signed according to the provisions of an Act of the fourth year of the reign of King William the Fourth, intituled *An Act, etc.* [setting out the title of the Act], the ratepayers of this parish of [insert the name of the parish] are hereby required, all and each of them, on the day of next, and the following day, to signify to the said churchwardens, by a declaration, either printed or written, or partly printed or partly written, addressed and delivered to one of the churchwardens at [insert here the place], their votes for or against the adoption of the aforesaid Act, or so much thereof as relates to watching or lighting [as the case may be], the amount of the money to be raised in the succeeding year for the purposes thereof being [here insert the sum agreed on at the meeting], and the number of inspectors to be elected [insert the number also agreed on], such sum and such number of inspectors being fixed and determined upon at a meeting of the ratepayers called pursuant to the said Act.  
(Signed) Churchwardens."

Sect. 11. "The said declaration shall be to the following effect :—

"I, A. B. of Street [or 'place' or 'house'] in this parish of vote ['for' or 'against,' as the case may be], the adoption of the Act of the fourth year of the reign of his Majesty King William the Fourth, intituled *An Act, etc.* [set out title of the Act], or so much thereof as relates to watching or lighting [as in the notice], the amount of the money to be raised in the succeeding year for the purposes thereof being [as in notice], and the number of inspectors to be elected [as in notice]."

Sect. 12. "The said churchwardens shall carefully examine the votes to them delivered as aforesaid, and shall compare them with the last rate made for the relief of the poor of the said parish, and shall be empowered to call before them and examine any parish officer touching the said,

votes, or any ratepayer so giving his vote, and after a full and fair summing up of the said votes shall, by public notice according to the form and manner hereafter prescribed, declare whether or not two-thirds of the votes given have been given in favour of the adoption of the said Act (or so much thereof as relates to watching or lighting, as in the notice), and also as to the sum of money to be raised in the succeeding year, and the number of inspectors to be elected to be (as in the notice): Provided always, that the whole number of persons voting shall be a clear majority of the ratepayers of the parish: Provided also, that in case of a poll being demanded as aforesaid, the adoption or non-adoption of this Act, with the sum to be raised, and the number of inspectors to be elected as aforesaid, shall be decided by such number of votes as aforesaid: Provided also, that the expenses incurred by the churchwardens in calling such meeting, giving the notices as aforesaid, and in taking such poll, shall be paid out of the rate collected for the relief of the poor in the said parish."

2. By  
Statute.

3 & 4 Will. 4,  
c. 90.

them are in favour of adopting this Act.

Whole number of voters to be the majority of ratepayers of parish.

Expenses incurred by churchwardens to be paid out of poor-rates.

Ratepayers may inspect votes.

Sect. 13. Provided always, "That any of the ratepayers of the aforesaid parish, not exceeding five together, may inspect, at or in the vestry-room, or in some convenient place within the same parish, and they are hereby empowered to inspect the votes so given for and against the adoption of this Act, with the sum to be raised, and number of inspectors to be elected as aforesaid, at all seasonable times within one month after such notice shall have been given; and the churchwardens of the said parish are hereby required carefully to preserve the said votes, and freely to permit and allow the examination thereof by the aforesaid ratepayers of the said parish at all seasonable times within the period aforesaid."

Sect. 14. "No person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing, as such, under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting."

No person to vote unless he has been rated one year.

Sect. 15. "Notice of the adoption of this Act (or any part thereof, specifying it), with the amount of the sum to be raised in the succeeding year, and the number of inspectors to be elected by any parish, shall be forthwith (a) given by the churchwardens for the time being of the said parish by affixing a notice of the same to the principal door of every church and chapel (b) within the said parish, or on the usual place of affixing notices relating to the parochial affairs of such parish; and in such case the provisions of this Act shall from thenceforth take effect and come into operation in such parish (see *post*, Form No. 11): Provided always, that it shall be lawful for the inhabitants present at any meeting called in manner herein directed, at any time after the expiration of three years from the time when the provisions of this Act shall have been adopted, to

Notice of adoption of this Act

to be affixed on church door.

Act may be abandoned.

(a) In *Ex parte the Overseers of Warblington* (18 Jur. 494; S. C. nom. *Reg. v. Deverell*, 3 El. & Bl. 372; 23 L. J. M. C. 121), it was held by Lord Campbell, C. J., that "forthwith" meant within a reasonable time; and by Erle and Coleridge, JJ., that the provision requiring notice to be given *forthwith* was directory only, and that non-compliance therewith did not invalidate the adoption.

(b) A notice affixed on the chapel of the district, but not on two dissenting chapels within the district, was held to be sufficient. (*Reg. v. Deverell*, *supra*.) But where there were three churches in the parish, a notice affixed on one only was held insufficient, although that was the only church where poor-rates had theretofore been published. (*Reg. v. Whipp*, 4 Q. B. 141; 12 L. J. M. C. 64.)

2. By  
Statute.3 & 4 Will. 4,  
c. 90.

determine that the provisions of this Act shall, from and after a day to be fixed upon at such meeting, cease to be acted upon; in which case, from and after such last-mentioned day, the provisions of this Act shall no longer be in force in such parish: Provided nevertheless, that the provisions in this Act contained shall remain and continue in force for the purpose of collecting and recovering any rate which may have been previously made; and if on the abandonment and ceasing to act upon the provisions of this Act there shall be any balance in the hands of the said inspectors after defraying the expenses incurred in carrying into effect the provisions of this Act, the said balance shall be paid over to the overseers of the poor of the said parish, to be applied in aid of the poor-rates of the said parish."

If meeting deter-  
mine against  
adopting this  
Act, no other  
meeting to be  
convened in less  
than one year.

Sect. 16. "In case any such meeting convened as aforesaid, or, in case of a poll having been demanded as aforesaid, a majority of two-thirds of the votes as aforesaid shall not have determined to adopt the provisions of this Act, it shall not be lawful for the inhabitants to meet again in less than one year from the period at which such meeting shall have been so convened as aforesaid" (a).

Mode of electing  
inspectors (b).

Sect. 17. "The inspectors herein mentioned shall be elected in manner following; (that is to say), the churchwardens of any parish adopting the provisions of this Act shall, in the manner herein first directed, forthwith call a meeting (see *post*, *Form* No. 12) of the ratepayers of such parish, and each candidate, being a person who shall reside within such parish, and who shall have been assessed or charged by the last rate made for the relief of the poor in respect of a dwelling-house or other tenement or premises of the annual value according to the said rate of fifteen pounds or more, shall be eligible to be elected an inspector for the purposes of this Act, and shall be proposed at the said meeting by some person duly qualified to vote thereat, and shall be seconded by some other person in like manner qualified; and if more candidates than the number of inspectors authorized to be elected shall be proposed, and a poll shall be demanded by any ten persons qualified to vote on behalf of any such candidates, then the chairman shall open and proceed with such poll, and in a book or books prepared for that purpose, which book or books the churchwardens are hereby required to cause to be prepared, shall enter or cause to be entered the names of all such candidates, and the name of every person duly qualified to be present and vote who shall desire to vote, together with his description and abode, and shall register the vote of every such person for every or any such candidate as every such person may respectively require (see *post*, *Form* No. 7); and if the votes of all the persons duly qualified and desirous to vote cannot be conveniently collected and registered by four of the clock of the same day upon which the poll shall have been commenced, then the chairman shall at that hour adjourn such poll to the day next succeeding, unless such day shall be a Sunday, Christmas Day, or Good Friday, and in that case to the day following, and then proceed to collect and register the votes of all persons duly qualified and applying to vote: Provided nevertheless,

Qualification of  
inspectors.

Mode of proceed-  
ing if poll de-  
manded.

Poll, when to  
close.

(a) In the event of the meeting not adopting the provisions of the Act, it would be proper that the chairman should furnish the churchwardens with a minute thereof, that no other meeting may be held in less than a year from that period. The form may be easily drawn up from that referred to at sect. 9. (See *Mr. Tidd Pratt's publications on this Act, with notes*, p. 10.)

(b) By the 5 & 6 Will. 4, c. 76, s. 88 (*Vol. I.*, tit. "*Corporations*") the council of a borough may assume the powers of inspectors under this Act, for the purpose of lighting any part of the borough not under any local Act for lighting; but, having once elected to act as inspectors, they cannot afterwards abandon the office, nor after such election can inspectors be re-appointed under this Act. (*Quick v. St. Ives*, 8 *W. R.* 414.)

that the poll shall finally close at four of the clock on the day to which it shall have been adjourned, or sooner, provided all persons duly qualified and desirous to vote shall have voted, and after the lapse of one hour without any person offering to vote; and as soon after the close of the poll as may be possible the result thereof shall be declared at the place where the election may have been holden, and certified by the chairman to the overseers of the poor (see *post*, *Form* No. 13); and the said churchwardens shall be reimbursed all such reasonable charges and expenses as may be incurred in providing clerks and books, and otherwise in the performance of the duties hereby required of them by the candidates at the said election for the said office: Provided nevertheless, that if the provisions of this Act are adopted at the meeting first called for that purpose, the said inspectors may be appointed at the same time by the ratepayers of such parish then present, unless a poll should be demanded, and if such poll should be demanded it shall be proceeded with as herein directed."

2. *By Statute.*

3 & 4 Will. 4,  
c. 90.

Inspectors may be appointed at first meeting.

Sect. 18. "In every parish adopting the provisions of this Act, the inspectors shall, within one month next after the expiration of twelve calendar months from the day of such adoption, give notice to the churchwardens of the said parish that they are ready to produce their accounts and vouchers for the previous year, and thereupon the said churchwardens shall give due notice, in the manner required with respect to the first meeting to be held under this Act, that a meeting of the ratepayers (*a*) of the said parish will be held at an hour and place in the said notice to be mentioned, on some day, not being a Sunday, within ten days from the receipt of such notice, for the purpose of the said inspectors producing such accounts and vouchers, and for the election of inspectors for the execution of this Act, and for determining the amount of the money to be raised for the purposes of this Act for the current year; and in every future year such meeting shall, for the purposes aforesaid, be held on the same day in the corresponding month, except such day should fall on a Sunday, and then on the day following." (See *post*, *Forms* 14 and 15.)

At the end of twelve months the inspectors to give notice to churchwardens that they are ready to produce their accounts, and churchwardens to call a meeting for that purpose.

Meetings in future years.

Sect. 19. "At such annual meeting the said inspectors shall produce their accounts and vouchers of all moneys received and paid by virtue of this Act for the previous year; and a duplicate or copy of such accounts, verified on oath before any two justices by the said inspectors or any two of them, shall be deposited with the said inspectors, and shall be open at all reasonable times to the inspection of all parties interested; and at such annual meeting one-third of the inspectors, or as near thereto as the number appointed will admit of, shall go out of office in rotation; and in place of such inspectors so going out of office a like number of other inspectors shall be elected: Provided always, that any of such outgoing inspectors shall be re-eligible, and may be re-elected, and shall in such case continue to act and remain in office, anything herein contained to the contrary notwithstanding."

Inspectors at such meeting to produce accounts; one-third of them to go out of office, and others elected.

Outgoing inspectors eligible to be re-elected.

Sect. 20. "The chairman appointed to preside at such annual meeting shall proceed in such manner as the chairman at the first meeting to be held under this Act is hereinbefore directed to proceed at the election of the inspectors to be first appointed for the execution of this Act, and shall decide on questions which may arise as to the eligibility or qualifi-

Chairman to decide questions as to eligibility, etc.

(*a*) The resolution of a simple majority of the ratepayers voting at this meeting, or, in case of a poll being demanded, of the ratepayers voting upon it, is sufficient to determine the amount to be raised for the purpose

of the Act in a subsequent year. The necessity for a majority of two-thirds of the ratepayers present exists only in the case of the original meeting held under sect. 9, *ante*, 365. (*Beechey v. Quentery*, 10 *M. & Wels.* 65.)

2. By  
Statute.

3 & 4 Wül. 4,  
c. 90.

How vacancies  
in the number of  
inspectors shall  
be filled up.

Inspectors to  
meet monthly.

Rated inhabi-  
tants may prefer  
complaints.

Special meetings  
of inspectors.

Quorum.

Inspectors to  
appoint officers  
during pleasure,  
and rent an office  
for the transac-  
tion of their  
business.

No person to hold  
two offices, etc.,  
at same time.

Security to be  
taken from  
treasurer.

If security not  
given, etc., ap-  
pointment void.

cation of any person whatsoever, and as to all matters whatsoever connected with the said election, and shall declare the result of the same as aforesaid."

Sect. 21. "In case any inspector shall die, or become disqualified by change of residence or otherwise, or shall neglect to act, and in case of any casual vacancy happening in any manner whatever, so that the number of inspectors shall be reduced to less than three, notice shall be immediately given by the acting inspectors to the churchwardens of the parish, who shall forthwith, in the manner directed by this Act, call a meeting of the rated inhabitants as aforesaid, for the purpose of filling up such vacancy or vacancies." (See *post*, Form No. 16.)

Sect. 22. "The inspectors for executing this Act in any parish shall meet on the first Monday in every month, at noon, at some convenient place or office previously publicly notified; and at such monthly meeting it shall be lawful for any inhabitant rated to the relief of the poor of any such parish to appear there, and prefer any matter of complaint which he may think proper to make concerning any matter or thing done by force or in pursuance of or under pretence of the provisions of this Act."

Sect. 23. "Such inspectors shall meet at all other times and so often as at any previous meeting shall be determined upon; and it shall be at all times competent for any one inspector, when three inspectors only shall have been appointed, and in all other cases for any two inspectors, by writing under his or their hands, to summon, upon at least forty-eight hours' notice, the inspectors for any special purpose therein named, and for such time as shall be therein named; and that at all meetings of such inspectors any number not less than one-third of the whole number, when more than three inspectors shall have been appointed, and when only three inspectors shall have been appointed then not less than two inspectors, shall constitute a quorum for transacting business."

Sect. 24. "It shall be lawful for the said inspectors elected in any parish under this Act for the time being, and they are hereby authorized and required to appoint, during pleasure, such treasurer and other officers as they shall think necessary for effecting the purposes of this Act, and to remove and displace the same, and to hire and rent a sufficient office or house or room for holding their meetings and transacting their business, and also to appoint suitable salaries, wages, and allowances to and for such treasurer and other officers, and also to agree for a reasonable rent for such office or house or room, and to pay such salaries, wages, and allowances, and such rent, out of the moneys received by the inspectors under the authority of this Act: Provided nevertheless, that no person shall at the same time hold two offices or situations under the said inspectors" (a).

Sect. 25. "It shall be lawful for the said inspectors, or any two or more of them, and they are hereby required to take security from the treasurer to be appointed by virtue of this Act for the due execution of his office of treasurer, according to the true intent and meaning of this Act, which security shall be to the full amount of the sum likely to be in the hands of the said treasurer at any one time; and in case any such treasurer shall neglect or refuse for the space of three weeks next after his appointment to give or offer such security to the satisfaction of the

(a) Mr. Tidd Pratt, in his publication on this Act, observes (p. 15), that as the overseers are bound to pay the money mentioned in the inspector's order to the treasurer, it would be

proper that on the appointment of every treasurer a notice of his name and place of residence should be sent to the overseers.

said inspectors, then the appointment of every such person so neglecting or refusing shall be null and void to all intents and purposes; and the said inspectors shall, within three weeks then next, assemble and appoint some other fit and proper person to the office of treasurer, instead of the person so refusing or neglecting as aforesaid, and shall so assemble and appoint from time to time until security shall be given to their satisfaction as aforesaid."

2. By  
Statute.

3 & 4 Will. 4  
c. 90.

Sect. 26. "That every such treasurer and other officer appointed by virtue of this Act shall, under his respective hand, and at such time or times, and in such manner as the said inspectors shall direct, deliver to the said inspectors, or such person as they shall appoint, true and perfect accounts in writing of all matters and things committed to his charge by virtue of this Act, and also of all moneys which shall have been by such officer received by virtue of or for the purposes of this Act, and of how much thereof shall have been expended and disbursed, and for what purposes, together with proper vouchers for such payments; and that every such officer shall pay all such moneys as shall remain due from him to the treasurer for the time being, or to such person or persons as the said inspector shall appoint to receive the same; and if any such treasurer, officer, or other person shall refuse or neglect to make and render such account, or to produce and deliver up the vouchers relating to the same, or to make payments as aforesaid, or shall refuse or wilfully neglect to deliver to the said inspectors, or to such person or persons as they shall appoint to receive the same, within three days after being thereunto required by the said inspectors by notice in writing (*see post, Form No. 17*), under the hands and seals of any two or more of the said inspectors, given to or left at the last or usual place of abode of such officer, all books, papers, and writings in his custody or power relating to the execution of this Act, or to give satisfaction to the said inspectors, or such other person or persons as aforesaid, respecting the same, then, and in every such case, upon complaint made by the said inspectors, or by such person or persons as they, the said inspectors, shall appoint for that purpose, of any such refusal or wilful neglect as aforesaid, to any justice of the peace, such justice may, and he is hereby authorized and required to issue a summons under his hand and seal for the officer so refusing or neglecting to appear before two justices of the peace; and upon the said officer appearing, or having been so summoned and not appearing without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices to hear and determine the matter in a summary way; and if, upon confession of the party, or by the testimony of any credible witness or witnesses upon oath (which oath such justices are hereby empowered to administer), it shall appear to such justices that any moneys remain due from such officer, such justices may and they are hereby authorized and required, upon non-payment thereof, by warrant under their hands and seals, to cause such money to be levied by distress and sale of the goods and chattels of such officer; and if no goods and chattels of such officer shall be found sufficient to answer and satisfy the said money, and the charges of distraining and selling the said goods and chattels, or if it shall appear to such justices that such officer had refused or wilfully neglected to render and give such account, or to produce the vouchers relating thereto, or that any books, papers, or writings relating to the execution of this Act remained in the hands or in the custody or power of such officer, and he refused or wilfully neglected to deliver or give satisfaction respecting the same as aforesaid, then and in every such case such justices shall and they are hereby required to commit such offender to the common gaol or house of correction for the county, city, or place where such offender shall be or reside, there to remain, without bail or mainprize, until he shall have given a true and perfect account as aforesaid, or until he shall have paid such moneys as aforesaid, or compounded with the said inspectors for such money, and shall have paid such composition in such manner as they shall appoint

Treasurer and  
officers to ac-  
count.

Proceedings  
against officers  
neglecting to  
account.

Complaint may  
be made to jus-  
tices.

Money may be  
levied by dis-  
tress.

If no goods, etc.,  
offender may be  
committed to  
gaol, etc.

Inspector may  
compound.



2. *By Statute.*

3 & 4 Will. 4, c. 90.

Not to be imprisoned for longer than three months.

Commitment of offender not to discharge his sureties.

Officers taking any fee or reward besides the salary, etc., appointed, to forfeit £50.

No inspector to hold office of trust under this Act.

Penalty of £50.

Inspectors may sue and be sued in the name of any one of them.

Action, when not to abate.

Inspector to be a competent witness.

Inspector to be reimbursed for all costs.

(which composition the said inspectors are hereby empowered to make and receive), and until he shall have delivered up such books, papers, and writings, or given satisfaction in respect thereof, to the said inspectors, or to such other person or persons as aforesaid; but no such offender shall be kept or detained in such common gaol or house of correction, for want of sufficient distress, by virtue of this Act, for any longer space of time than three calendar months."

Sect. 27. "No prosecution or commitment, under the provisions of this Act, of any treasurer or other officer or person to be appointed under the powers of this Act, shall acquit or discharge any surety or security that shall or may have been taken by or given to the said inspectors for the due and faithful execution of his or their office, or the payment of the moneys received or to be received by him or them respectively."

Sect. 28. "If any person who shall be employed as treasurer, or any other officer or servant who shall be in anywise employed by the said inspectors for putting this Act or any of the powers thereof into execution, shall exact, take, or accept any fee or reward whatsoever other than such salaries, allowances, and rewards as are appointed by this Act, or shall be appointed, allowed, and approved of by the said inspectors, for or on account of anything done or to be done by virtue of this Act, or on any account whatsoever relative to putting this Act into execution, or shall in anywise be concerned or interested in any bargain or contract made or to be made by the said inspectors; and no person during the time he holds the office of inspector shall accept or hold any office or place of trust created by virtue of this Act within the said parish, or shall be concerned, directly or indirectly, in any contract with the said parish; every such person so offending shall be incapable of ever serving or being employed under this Act, and shall over and above forfeit the sum of £50 to any person or persons who shall sue for the same."

Sect. 29. "That the said inspectors may sue and be sued in the name of any one of the inspectors for the time being; and all actions or suits that may be necessary or expedient to be brought for the recovery of any penalty or sum of money due or payable by virtue of this Act, or for or in respect of any other matter or thing relating to this Act, may be brought in the name of any one of the said inspectors; and that no action or suit which may be brought, commenced, or prosecuted by or against the said inspectors, or any of them, by virtue or on account of this Act, shall abate or be discontinued by the death, resignation, or removal of such inspector, but such inspector shall be deemed plaintiff or defendant in any such action or suit (as the case may be): Provided also, that in all cases in which the inspector as aforesaid shall, in pursuance of this Act, be the plaintiff or defendant on the record in any action or actions, suit or suits, in which in effect the said inspectors shall be suing or sued in the name of such one inspector as aforesaid, he (although appearing as the plaintiff or defendant on the record) may and shall nevertheless (if not otherwise interested or objectionable) be a good examinable and competent witness in every action or suit either for or against the said inspectors; and all the affidavits of debt or service which may be necessary or expedient to be made preparatory to or in the prosecution or defence of any and every such action, suit, or proceeding, shall and may be lawfully made by such one inspector, notwithstanding he shall be nominal plaintiff or defendant on the record as aforesaid: Provided also, that every or any such inspector in whose name any action or suit shall be commenced, prosecuted, or defended, in pursuance of this Act, shall always be reimbursed and paid out of the moneys to arise by virtue of this Act, all such costs, charges, and expenses as he shall be put to or become chargeable with by reason of his being made plaintiff or defendant therein; and in case of his removal from office, or ceasing to act as such inspector, all such costs, charges, and expenses shall be paid by the

inspector for the time being; and no inspector shall be personally answerable or liable for the payment of the same or any part of them, unless such action or suit shall arise in consequence of his own wilful neglect or default, or have been brought or commenced or be defended without the order or direction of the said inspectors."

Sect. 30. "All acts, orders, and proceedings of the said inspectors at any of their meetings shall be entered in a book to be kept by them for that purpose, and shall be signed by two of the inspectors who were then present; and all such acts, orders, and proceedings shall then be deemed and taken to be original acts, orders, and proceedings; and such books shall and may be produced and read as evidence of all such acts, orders, and proceedings upon any appeal or trial or information, or any proceedings, civil or criminal, and in any court or courts of law or equity whatsoever."

Sect. 31. "The said inspectors shall and they are hereby required from time to time to order and direct a book or books to be provided and kept, in which book or books shall be entered true and regular accounts of all sums of money received, paid, and expended for or on account of the purposes of this Act, and of the several articles, matters, and things for which such sums of money shall have been disbursed and paid; and such book or books shall at all reasonable times be open to the inspection of the said inspectors and of every inhabitant rated to the relief of the poor of the parish adopting the provisions of this Act, without fee or reward; and the said inspectors and other persons aforesaid, or any of them, shall or may take copies of or extracts from the said book or books, or any part thereof, without paying for the same; and in case the said inspectors shall refuse to permit or shall not permit the said persons aforesaid to inspect the same, or take copies or extracts as aforesaid, such inspector shall forfeit and pay any sum of money not exceeding £5 for each default, to be levied and applied in manner herein-after provided."

Sect. 32. "As soon as the inspectors have been elected as aforesaid, it shall be lawful for them, or any two or more of them, from time to time to issue an order (*a*) under their hands to the overseers (*b*) of the poor of any parish to which the provisions of this Act shall be extended, by which order they shall require the said overseers to levy the amount mentioned in the said order." (*See post, Form No. 18.*)

Sect. 33. "The overseers aforesaid shall, for the purpose of collecting, raising, and levying the rate (*c*) necessary for the purposes of this Act, proceed in the same manner, and have the same powers, remedies, and privileges as for levying money for the relief of the poor in the said parish:

2. By  
Statute.

3 & 4 Will. 4,  
c. 90.

Inspector, when  
not personally  
answerable.

Proceedings at  
meetings of in-  
spectors to be  
entered in books,  
which shall be  
good evidence.

Accounts to be  
kept.

And open to in-  
spection of rate-  
payers, who may  
take copies, etc.

Inspectors to  
issue an order to  
overseers for  
payment of  
money for the  
purposes of this  
Act.

Power to collect  
rates (*d*).

(*a*) This order can only be questioned by appeal under sect. 66, *post*. (*Reg. v. Rye JJ.*, 13 *W. R.* 142; 10 *Law Times*, *N. S.* 525.)

(*b*) Churchwardens are included in the term "overseers of the poor," and this although the parish is divided, and each part has elected separate overseers, the division not being under the 13 & 14 *Car. 2*, c. 12, or the 59 *Geo. 3*, c. 134. (*Reg. v. Rye JJ.*, *supra*.)

(*c*) By the 23 & 24 *Vict. c. 51*, tit. "Tolls," vol. v., the amount of the rates

levied under this Act must be annually returned to a Secretary of State.

(*d*) Where part only of a parish had adopted this Act, a rate purporting by its heading to be a rate for the whole parish was held to be a nullity, although the names of persons liable to be rated only were inserted in it: and it was also held that a fresh rate could be made for the same purposes as the first was intended for without quashing the first. (*Potton v. Brown*, 10 *Law Times*, *N. S.*, 525.)

2. By  
Statute.

3 & 4 Will. 4,  
c. 90.

Owners, etc., of  
houses and land,  
in what propor-  
tion to be rated.

Land and houses  
to be rated sepa-  
rately.

Land, etc., not  
to be assessed  
higher than in  
last poor rate.

Succeeding over-  
seers to collect  
rate if same not  
levied;

And to have same  
powers, etc., as  
their predeces-  
sors.

Overseers to pay  
amount to trea-  
surer within  
three months  
from delivery of  
order.

Provided always, that owners (*a*) and occupiers of houses, buildings (*b*), and property (other than land) rateable to the relief of the poor in any such parish shall be rated at and pay a rate in the pound three times greater than that at which the owners (*a*) and occupiers of land shall be rated at and pay for the purposes of this Act (*c*): Provided also, that the total amount of the sum to be collected, raised, and levied for the purposes of this Act within any one year shall not exceed such sum as shall have been agreed on by the inhabitants of the said parish as aforesaid, and that the said sum shall be assessed upon the full and fair annual value to which lands, houses, buildings, and other property within the said parish shall be rated or shall be rateable according to the last valuation made and acted upon for the rate for the relief of the poor within the said parish."

Sect. 34. "Provided always, that it shall be lawful for the overseers of the poor of any such parish, and they are hereby required, whenever, according to the rate made for the relief of the poor, one and the same person shall be rated in one sum in respect of land, and also of houses, buildings, and other property, to cause such land, and also such houses, buildings, and other property, to be separately assessed, and the sum hereby authorized to be levied shall be assessed accordingly: Provided always, that every court-yard, yard, or garden (such garden not being a market-garden or nursery ground) shall be included in and make part of the assessment to be made on the house, buildings, or other property to which they may be respectively attached: Provided also, that such land, houses, buildings, and other property, shall not in the whole be assessed at a higher amount than they were in the last rate made for the relief of the poor within the said parish."

Sect. 35. "If the overseers of the poor of any parish adopting the provisions of this Act shall go out of office before they shall have collected or levied the amount mentioned in the order issued under the hands of the said inspectors in pursuance of this Act, they shall deliver to the succeeding overseers, within seven days from the time they go out of office, a full and particular account in writing of the names of the parties from whom any money may be due on account of the rate made in pursuance of this Act, as well as the last order issued to them by the said inspectors; and in such case the succeeding overseers shall have the like powers and remedies under this Act for the collecting and recovery thereof, and shall be liable to the same penalties and forfeitures in case of the non-payment to the said inspectors as their predecessors had or were liable to."

Sect. 36. "The overseers of the poor of every parish adopting the provisions of this Act, to whom any such order as aforesaid shall be issued, shall pay over the amount mentioned in such order to the trea-

(*a*) Owners of small tenements are liable to be assessed in respect of them to rates for lighting and watching in parishes where the owners of such tenements are assessed to the poor rate under the 13 & 14 Vict. c. 99, but only on the reduced scale prescribed by that Act. (*Reg. v. Lambert*, 2 C. L. R. 883.)

(*b*) A watching and lighting Act authorized the commissioners to make a rate upon all persons inhabiting, using, or occupying any houses, shops, mills, sheds, or other buildings or tenements within the township: Held, that sheds erected to protect

engines for the more convenient working of a coal-mine were rateable, although it was contended that they were exempt, as being merely accessorial to the engines. (*Brown v. Granville* (Lord), 3 M. & Scott, 403; 10 Bing. 69, S. C.) A wet dock or tidal basin is rateable at the higher amount. (*Peto v. West Ham*, 28 L. J. M. C., 240; 2 El. & El. 144.)

(*c*) By the 14 & 15 Vict. c. 50, "Tithes, tithe rentcharges, moduses, compositions, real and other payments in lieu of tithes, shall be assessed as and in the same proportion of their annual value as land."

suror to be appointed in the said parish under this Act within three calendar months from the delivery of such order to one of the overseers, and shall keep the accounts of the said rate levied for the purposes of this Act separate and distinct from the accounts of the rates levied in the same parish for the relief of the poor; and at the time of making any payment to the said treasurer, the said overseers shall deliver to him a note in writing (*see post, Form No. 19*), signed by them, specifying the amount so paid, which note shall be kept by the treasurer as a voucher for his receipt of that particular amount; and the receipt of the said treasurer, specifying the amount paid to him by the overseers, shall be a sufficient discharge to the overseers for such amount, and shall be allowed as such in passing their accounts with their respective parishes." (*See post, Form No. 20*.)

## 2. By Statute.

3 & 4 Will. 4,  
c. 90.

Receipt of treasurer to be a discharge to overseers.

Sect. 37. "Where any persons other than the overseers of the poor shall by virtue of any office or appointment be authorized and required to make and collect or cause to be collected the rate for the relief of the poor in any parish to which all or any of the provisions of this Act shall be extended, such persons, by whatsoever title they may be called, shall be deemed to be overseers of the poor within the meaning of this Act, and to be included under and denoted by the words 'overseers of the poor,' for all the purposes of this Act, as fully as if they were commonly called or known by the title of overseers of the poor."

Where other persons are authorized to collect poor's rates, such persons to be deemed overseers.

Sect. 38. "In case the amount directed by such order as aforesaid to be paid by the overseers in any parish, to which all or any of the provisions of this Act shall be extended, shall not be paid to the said treasurer within the time specified for that purpose, in the said order, any justice of the peace, upon complaint thereof made to him by the said treasurer, or by any one of the inspectors, may, and he is hereby authorized and required to issue a summons under his hand and seal for the said overseers (a) so refusing or neglecting to pay such money as aforesaid to appear before two justices of the peace; and upon the said overseers appearing, or having been so summoned and not appearing, without some sufficient and reasonable excuse, or not being found, it shall be lawful for the said justices, and they are hereby required, in case the said money is not paid, to issue their warrant for levying the amount, or so much thereof as may be in arrear, by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers shall not be sufficient to pay the same, the arrears thereof shall be added to the amount of the next levy which shall be directed to be made in such parish for the purposes of this Act, and shall be collected by the like method."

Overseers may be distrained upon for non-payment.

If goods be not sufficient, etc., arrears to be added to amount of next levy.

Sect. 39. "The said inspectors shall from time to time appoint and employ such number of able-bodied watch-house keepers, sergeants of the watch, watchmen, patrols, street-keepers, and other persons as they shall think sufficient for the proper protection of the inhabitants, houses, and property, streets and other places within the limits of this Act, by day or by night, or by day and by night, and provide for the use of all such watchmen, watch-house keepers, sergeants of the watch, patrol, and persons as aforesaid, such clothing, arms, ammunition, and weapons, and shall assign to them such beats and rounds and duties, and appoint such hours for them to be on duty, and also such wages, rewards, and gratuities, or remunerations for their services, and also make such rules,

Watchmen, etc., to be appointed, and provided with arms, clothing, etc. (b).

(a) See *Reg. v. Rye JJ.*, ante, note (b), p. 373.

(b) See the 3 & 4 Vict. c. 88, s. 20, tit. "Constable," vol. i., by which it is provided that constables or watchmen appointed under this Act shall continue to act until it shall

be notified by the chief constable that he is ready to undertake the charge of the place, in which case they are to be discontinued, and no further rates are to be levied for their payment.

2. *By Statute.*

3 & 4 Will. 4, c. 90.

Inspectors may defray expenses of prosecuting felons, etc.

Expenses, etc., to be paid out of moneys received under the Act.

Watchmen, etc., to deliver up clothing on removal, etc.

Penalty.

Duty of watchmen, etc., to prevent robberies, etc. ;

to apprehend felons, etc. ;

may require persons to aid and assist them.

Penalty for assaulting, etc., watchmen.

orders, and regulations relative to such watch-house keepers, sergeants of the watch, watchmen, patrol, street-keepers, and other persons, and their duties, as to the said inspectors shall seem meet, and also shall and may offer and give, as well to the said persons as to any other not specially employed by them, such gratuities and rewards for apprehending felons and others, offenders within the limits of this Act, as to them shall seem proper; and shall and may defray the expenses of prosecuting any such felons and offenders, for the protection of the inhabitants of any parish adopting the provisions of this Act, or in defending any of the said persons or other officers of the said inspectors in the execution of their duty, as they shall think proper; and the said wages, rewards, gratuities, and the costs of such prosecutions or defences, and all other expenses that may be incurred by the said inspectors for the protection and guard of the inhabitants, shall and may be paid by the said inspectors out of the moneys received in pursuance of this Act.

Sect. 40. "All such clothing, arms, ammunition, and weapons, so provided for the use of such watchmen, watch-house keepers, sergeants of the watch, patrol, and persons as aforesaid, shall remain and continue the property of the inspectors for the time being, and in case of the resignation, removal, or death of any such watchmen, watch-house keeper, sergeant of the watch, patrol, or person as aforesaid, shall be returned to the said inspectors; and in case of neglect or refusal so to do, the said watchmen, watch-house keeper, sergeant of the watch, patrol, or person as aforesaid, or in case of his death the party in possession thereof, shall be subject and liable to a penalty not exceeding the sum of £20, to be recovered for the use of the said inspectors."

Sect. 41. "The watchmen, sergeants of the watch, patrols, and other persons to be appointed by virtue of this Act shall, during the time they shall be on duty, use their utmost endeavours to prevent any mischief by fire, and also to prevent all robberies, burglaries, and other felonies and misdemeanours, and other outrages, disorders, and breaches of the peace within the limits of the parish adopting the provisions of this Act; and to apprehend and secure all felons, rogues, vagabonds, and disorderly persons who shall disturb the public peace, or any person or persons wandering, secreting, or misbehaving himself, herself, or themselves, or whom they shall have reasonable cause to suspect of any evil designs, and to secure and keep in safe custody every such person, in order that he or she may be conveyed as soon as conveniently may be before one of his majesty's justices of the peace, to be examined and dealt with according to law; and it shall and may be lawful to and for the said watchmen, sergeants of the watch, patrols, and other person or persons so appointed as aforesaid, to call and require any person or persons to aid and assist them in taking such felons, rogues, vagabonds, and all disorderly or suspected persons as aforesaid; and in case any person or persons shall assault or resist or shall promote or encourage the assaulting or resisting any of the watchmen, sergeants of the watch, patrols, or other person or persons so appointed as aforesaid in the execution of their duty, every such person shall for every such offence forfeit and pay any sum not exceeding 40s.; and in case any such offender shall not, on conviction, pay the said forfeiture, such justice is hereby required to commit him, her, or them to the house of correction, there to be kept to hard labour, if the said justice shall so order, for any time not exceeding three calendar months, unless such forfeiture shall be sooner paid; or instead of committing the said offender as aforesaid, the said justice may, by warrant under his hand and seal, cause the said forfeiture, as well as the costs (if any) to be levied by distress and sale of the goods and chattels of the offender, returning the overplus (if any) of the money raised or recovered, after discharging the said forfeiture and the costs and expenses of recovering and levying the same, to the owner of the goods and chattels so seized and distrained."

Sect. 42. "All watchmen, sergeants of the watch, and patrols shall be sworn in as constables before any justice of the peace, and act as such while in execution of the powers and authorities of this Act; and they are hereby invested with and shall have and enjoy the like powers and authorities, privileges and immunities, and shall be subject and liable to such and the like penalties and forfeitures, as any constable or constables is or are invested with, or shall or may have and enjoy, or is or are or shall be subject or liable to by law: Provided nevertheless, that no person by being sworn in and acting as or executing the office of a constable shall thereby gain a settlement in such parish." (For the powers and duties of a constable in general, see tit. "*Constable*," Vol. I.)

2. *By Statute.*

3 & 4 Will. 4, c. 90.

Watchmen, etc., to be sworn in, and to have the power of constables.

Not to gain a settlement thereby

Sect. 43. "In all such cases in which any of the duties usually performed by constables shall have been executed by any of the officers appointed by the inspectors as hereinbefore enacted, all fees and allowances for the performance of such duties shall be paid over to the said inspectors, to be by them applied in aid of the rate levied under the provisions of this Act."

Certain fees to be paid over to inspectors.

Sect. 44. "It shall be lawful for the said inspectors from time to time to provide and keep up fire engines, with pipes and other utensils proper for the same, for the use of the parish adopting the provisions of this Act, and to provide a proper place or places for the keeping of the same, and to place such engine under the care of some proper person or persons, and to make him or them such allowance for his or their trouble as may be thought reasonable, and the expenses attending the providing and keeping of such engines shall be paid out of the money authorized to be received by the inspectors under the provisions of this Act."

Fire engines to be provided.

Sect. 45. "It shall be lawful for the said inspectors, and they are hereby empowered, from time to time to cause such lamp irons or lamp posts or other posts to be put or fixed upon or against the walls or palisadoes of any houses, tenements, buildings, or enclosures (doing as little damage as may be practicable thereto), or to be put up and erected in such other manner, within all or any of the said roads, streets, and places within the limits of this Act, as they shall think proper; and also to cause such number of lamps, of such sizes and sorts, to be provided and affixed and put upon such lamp irons and lamp posts as they shall think necessary for lighting all or any of such roads, streets, and places, and cause the same to be lighted with gas, oil, or otherwise, for such number of hours in every twenty-four hours as they shall think necessary; and also to cause such a number of watch-houses or watch-boxes to be provided, erected, or affixed as they shall think necessary for watching all or any of the streets, roads, and places within the limits of this Act."

Lamp irons to be put up.

Lamps to be lighted with gas, etc.

Sect. 46. "Provided always, that nothing herein contained shall extend or be construed to extend to authorize or empower the said inspectors, or any body or bodies politic or corporate, or person or persons contracting with the said inspectors for lighting with gas such roads, streets, and public places, to carry or lay any pipe or pipes, cocks or branches from any mains or pipes, against, into, or through any dwelling-house or dwelling-houses, manufactories, public or private buildings, or to continue the same, without the consent in writing of the owner or owners, occupier or occupiers for the time being of such dwelling-house or dwelling-houses, manufactories, public or private buildings respectively, nor to enable any body or bodies politic or corporate, or person or persons contracting with the said inspectors for lighting such streets and public places, to enter into or upon any private lands or grounds, without the consent in writing of the owner or owners, occu-

Gas pipes not to be laid on private premises without consent.

2. *By  
Statute.*

3 & 4 Will. 4, c.  
90.

Owners of private grounds may alter position of pipes.

For stopping the  
escape of gas.

Penalty for  
neglect.

Power to convey  
away washings  
of gas works.

pier or occupiers of such lands or grounds for that purpose first had and obtained."

Sect. 47. "Provided also, that in case the soil, pitching, or pavement of any road or way, for the purpose of laying any gas main or gas pipe along, under, or across the same, be broken up with the consent of the owner or owners of the soil for the time being, and after the same shall have been so laid and placed, such owner or owners shall be desirous of having the same removed, it shall be lawful for such owner or owners at any time or times thereafter, if he, she, or they shall deem it necessary or expedient, at his, her or their own costs and charges, to alter and vary the position of such pipe or pipes, main or mains, and to relay the same, so that no damage be done thereby to the said body or bodies politic or corporate, or person or persons contracting with the said inspectors, and so that such body or bodies politic or corporate or person or persons contracting with the said inspectors as aforesaid be not thereby prevented from or obstructed in lighting any public or private lamp, unless such damage or obstruction be unavoidable."

Sect. 48. "Whenever any gas shall be found to escape from any of the pipes which shall be laid down or set up by order of the said inspectors in pursuance of this Act, the body or bodies politic or corporate, or person or persons whosoever making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any houses, manufactory, building, or other premises within the limits of any parish adopting the provisions of this Act, shall at their own expense, immediately after receiving notice by parol or in writing from any person or persons whatsoever, to be given or left at their office or usual place of transacting their business, of any such escape of gas, cause the most speedy and effectual measures to be taken to stop or prevent such gas from escaping; and in case the said body or bodies politic or corporate, or person or persons as aforesaid, shall not, within twenty-four hours next after such notice by parol or in writing being given of any such escape of gas, effectually stop and prevent the gas from escaping, and wholly and satisfactorily remove the cause of complaint, then and in every such case the said body or bodies politic or corporate, or person or persons as aforesaid, shall for every such offence forfeit and pay any sum not exceeding £5 for each and every day, after the expiration of twenty-four hours from the time of giving any such notice, during which the gas shall be suffered to escape as aforesaid; which penalty shall from time to time be recoverable in a summary way, on the oath or affirmation of one or more credible witness or witnesses, before any two justices of the peace, and shall and may be recovered, with all reasonable charges, by distress and sale of the goods and chattels of any such body or bodies politic or corporate, or person or persons as aforesaid, by the warrant of any two justices of the peace as aforesaid, to be granted in like manner and subject to the like provisions as are herein directed touching other penalties to be recovered by virtue of this Act."

Sect. 49. "It shall be lawful for the body or bodies politic or corporate, or other person or persons whosoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises within the limits of any parish adopting the provisions of this Act, to lay iron pipes, of such breadth, depth, and dimensions, and in such manner as they shall think expedient, under the roads, streets, and other public places within the limits of this Act, for the purpose of carrying off the washings or other waste liquids which may arise in the prosecution of the works aforesaid, the said body or bodies politic or corporate, or other person or persons as aforesaid, doing as little damage as may be in laying the said pipes, and immediately repairing, at their own

expense, all such damage: Provided that no such washings or other waste liquids, or any other matter or thing made or arising in the manufacture of such gas, shall be conducted or conveyed into any river, brook, canal, or running stream; and that no such pipe shall be laid in any situation where the same can, shall, or may in any manner interfere with, prejudice, or affect any of the present or future public or private wells, sewers, or drains within the limits of the parish adopting the provisions of this Act, or without the consent of the said inspectors."

Sect. 50. "If any body or bodies politic or corporate, company or companies of proprietors, or any other person or persons whatsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of any parish adopting the provisions of this Act, shall at any time empty, drain, or convey, or cause or suffer to be emptied, drained, or conveyed, or to run or flow, any washings or other waste liquids, substances, or things whatsoever which shall arise or be made in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any river, brook, or running stream, reservoir, canal, aqueduct, waterway, feeder, pond or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or do or cause to be done any annoyance, act, or thing to the water contained in any of them, whereby the water contained therein, or any part thereof, shall and may be spoiled, fouled, or corrupted, then and in every such case any such body or bodies politic or corporate, company or companies of proprietors, or other person or persons so offending as aforesaid, shall forfeit and pay for every such offence the sum of £200; and such penalty or forfeiture shall and may be sued for and recovered, together with full costs of suit, in any of his Majesty's Courts of law, by regular or summary action of debt or on the case, or by bill, plaint, or information, wherein no essoign, protection, privilege, wager of law, nor more than one imparlance shall be allowed; and the whole of such penalty shall be paid to the person or persons who shall inform or sue for the same: Provided always, that no such penalty or forfeiture shall be recoverable, unless the same be sued for within six calendar months from after the time when such annoyance, nuisance, injury, damage, act, or thing shall have ceased and determined: Provided also, that over and above and in addition to the said penalty of £200, and whether such penalty shall or shall not have been sued for or recovered, in case any of the said washings or other waste liquid, or noisome or offensive liquid, substances, or things, shall be emptied, drained, conducted, or conveyed, or caused or suffered to run or flow, in manner aforesaid, into any river, brook, or running stream, or any reservoir, canal, aqueduct, waterway, feeder, pond, or springhead, or well, or into any drain, sewer, or ditch communicating with any of them, or any such annoyance, nuisance, injury, damage, act, or thing shall be done or caused to be done as aforesaid, and notice thereof in writing shall have been given by any person or persons to whom the same shall belong, or by any other person or persons whomsoever, to the said body or bodies politic or corporate, company or companies of proprietors, or any of them, or other the person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises within any parish or part of a parish adopting the provisions of this Act, so offending, or to his, her, or their clerk or clerks, or to any person in his or their service or employ, and such body or bodies politic or corporate, company or companies of proprietors, or other person or persons, shall not, within twenty-four hours after such notice shall have been given to them or him as aforesaid, stop and hinder or prevent all and every such washings, waste liquids, or noisome or offensive liquids, substances, or things, from being emptied, drained, conducted, or conveyed, or from

2. By  
Statute.

3 & 4 Will. 4, c.  
90.

Penalty for conveying washings into any river, etc.



2. *By Statute.*

3 &amp; 4 Will. 4, c. 90.

running, or flowing, in manner aforesaid, and every such other annoyance, nuisance, injury, damage, act, or thing, from being done as aforesaid, then and in every such case the said body or bodies politic or corporate, company or companies of proprietors, or other person or persons so offending, shall forfeit and pay the sum of £20 for each and every day such washings, waste liquids, or noisome or offensive liquids, substances, or things, shall be so emptied, drained, conducted, or conveyed, or caused or suffered to run or flow in manner aforesaid, or such other annoyance, nuisance, injury or damage, act, or thing shall be so done or caused to be done as aforesaid; and such last-mentioned penalty shall and may be recovered and levied in such and the like manner as any other penalty or forfeiture is in and by this Act directed to be recovered and levied, and shall be paid to the informer, or to the person or persons who, in the judgment of the justice before whom the conviction shall take place, shall have sustained any annoyance, injury, or damage by any such act so done or committed."

Gas pipes to be laid four feet from water pipes, and in a particular manner.

Sect. 51. "All and every the pipes or other conduits to be used or laid for the conveyance of gas in, under, through, along, across or round any road, street, or other place within the limits of any parish adopting the provisions of this Act, shall be so laid at the greatest practical distance, and whenever the width of the carriage-way in such street or place will allow thereof, at the distance of four feet at least from the nearest part of any water pipe already laid down, or hereafter to be laid down, for the conveyance of water in, under, through, along, across, or round any of the said roads, streets, or other places within the limits of any parish adopting the provisions of this Act, excepting in cases where it shall be unavoidably necessary to lay the gas pipes across any of the said water pipes, in which cases the said gas pipes shall be laid over and above the said water pipes at the greatest practical distance therefrom, and shall form therewith a right angle; and in such cases the said gas pipes so crossing the said water pipes shall be at least nine feet in length, so that no joint of any of the said gas pipes shall be nearer to any part of the said water pipes than four feet at least; and in laying down the said gas pipes the said contractors or other persons supplying gas shall in no case join two or more gas pipes together previous to their being laid in the trench, but shall lay each pipe as near as may be in its place in the trench, and shall in such trench properly form the jointing with the other pipes to be added thereto with proper and sufficient materials, and shall also make and keep all and every such pipes, and all pipes connected and communicating therewith, and all the screws, joints, inlets, apertures, or openings therein respectively, air-tight, and in all and every respect prevent the said gas from escaping therefrom, upon pain of forfeiting for every offence the sum of five pounds."

To prevent escape of gas and contamination of water.

Sect. 52. "Whenever the water of any company of proprietors for supplying the inhabitants of any houses within the limits of any parish, part of a parish, or place adopting the provisions of this Act, with water, shall be contaminated by any of the gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises within the limits of any parish, part of a parish, or place adopting the provisions of this Act, the body or bodies politic or corporate, or person or persons making, furnishing, or supplying such gas, shall forfeit and pay the sum of twenty pounds, to be sued for and recovered, and shall be applied to and for the use and benefit of the said company supplying water as aforesaid; and in case any such water shall be contaminated or affected by gas in any way whatsoever, then and in every such case the said company or other persons making, furnishing, or supplying such gas shall, within twenty-four hours next after the notice thereof in writing, signed by the treasurer or other officer of and for such water company as aforesaid, or, by any person making use of such water, to be left at the usual place or office of transacting business of the said body or bodies

politic or corporate, or other person or persons, cause the most proper and effectual measures to be taken to stop and prevent gas from escaping from their mains, works, or pipes, or contaminating or affecting the water of such company as aforesaid; and in case the said body or bodies politic or corporate, or other person or persons, making, furnishing, or supplying gas, shall not, within twenty-four hours next after such notice so left as aforesaid, effectually stop and prevent the gas from so escaping, and wholly and satisfactorily remove the cause of every such complaint, and prevent all and every such contamination whereof notice shall be given as aforesaid, that then the said body or bodies politic or corporate, or other person or persons as aforesaid, shall on each and every complaint forfeit and pay to the treasurer or other officer for the time being of such water company as aforesaid, for the use and benefit of the same company, over and above the before-mentioned penalty of twenty pounds, the sum of ten pounds for each and every day during which the water of the said last-mentioned company shall be and remain contaminated or affected by such gas; and, in default of payment thereof as aforesaid, such penalty or penalties shall and may be recovered by information, to be exhibited on the oath of one credible witness, by and in the name of the treasurer or other officer for the time being of the said water company as aforesaid, or by and in the name of any one or more of the directors of the said company, at the option of the parties prosecuting such information against the said body or bodies politic or corporate, or other person or persons making, furnishing, or supplying gas, before any two justices of the peace, with costs, to be assessed by such justices, and to be levied by distress and sale of the goods and chattels of the said body or bodies politic or corporate, or other person or persons making, furnishing, or supplying such gas, together with the charges of such distress and sale, by warrant under the hand and seal of such justices, which warrant such justices are hereby empowered to grant; and such penalty or penalties, when so levied, shall be paid to the treasurer or other officer for the time being of such water company, for the use of such water company."

2. *By  
Statute.*

3 & 4 Will. 4,  
c. 90.

Sect. 53. "In any case in which it shall be or become a question upon such complaint as aforesaid, whether the said water be contaminated or affected by the gas of the said body or bodies politic or corporate, or other person or persons making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building, or other premises, within the limits of this Act, it shall be lawful for the company of proprietors, or other the owners or proprietors of any waterworks, to dig to and about and search and examine the mains, pipes, conduits, and apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, for the purpose of ascertaining whether such contamination proceed or be occasioned by the gas of the said body or bodies politic or corporate, or other person or persons as aforesaid; and if it shall appear that the said water has been contaminated by any escape of gas as aforesaid, the costs and expenses of the said digging, search, and examination, and of the repair of the pavement of the roads, street, or streets which shall be taken up or disturbed, shall be borne and paid by the said body or bodies politic or corporate, or person or persons as aforesaid; which costs and expenses of digging, search, and examination shall be ascertained and determined, if necessary, by such justices as aforesaid, and be recovered in like manner as any penalty may be recovered by virtue of this Act: Provided always, that if upon such examination it shall appear that such contamination has not arisen from any such escape of gas from any of the mains, pipes, or conduits of the said body or bodies politic or corporate, or other person or persons as aforesaid, then, and in such case, the said company of proprietors, or other the owners and proprietors of such waterworks, shall bear and pay all the costs and expenses of such search, examina-

For ascertaining  
if the water be  
contaminated.

2. *By  
Statute.*

3 & 4 Will. 4,  
c. 90.

Persons supply-  
ing gas liable to  
be indicted for a  
nuisance.

Penalty for wil-  
fully destroying  
or injuring  
lamps,

not exceeding  
40s. for every  
lamp, etc.

How recoverable.

How persons  
accidentally  
breaking lamps  
are to be dealt  
with.

tion, and repair as aforesaid, and shall also make good to the said body or bodies politic or corporate, or other person or persons as aforesaid, any loss, injury, or damage which may be occasioned to the said mains, pipes, conduits, or apparatus of the said body or bodies politic or corporate, or other person or persons as aforesaid, in and by such search and examination, the amount of such injury, loss, or damage to be ascertained and determined by such justices of the peace as aforesaid."

Sect. 54. "Provided always, that nothing in this Act contained shall extend, or be construed to extend, to prevent any person from proceeding by indictment or otherwise against any of the officers, servants, or workmen of the body or bodies politic or corporate, or other person or persons whomsoever, making, furnishing, or supplying any gas used or burnt for lighting any highway, street, or place, or any house, manufactory, building or other premises within the limits of any parish adopting the provisions of this Act, in respect of any works or other means which shall be employed by them or any of them in making the said gas, and using the same in furnishing with lights as aforesaid, as a public or private nuisance, or from bringing any action against the said body or bodies politic or corporate, company of proprietors, or person or persons as aforesaid, or any of their officers, servants, or workmen, for any injury sustained by reason of any such works, or the use of the said gas, or the method of lighting therewith, whether such injury shall proceed from the preparation or the use of the same gas, or method of lighting, or the carelessness or want of skill of any of the persons employed therein, or from any other cause whatsoever."

Sect. 55. "If any person shall wilfully break, throw down, spoil, or damage any watch-house, watch-box, or lamp, lamp-iron, lamp-post, pale, rail, chain, or other furniture thereof, or wilfully extinguish the light of any such lamp, it shall be lawful for any person or persons who shall see the offence committed to apprehend, and also for any other person or persons to assist in apprehending the offender or offenders, and by the authority of this Act, and without any warrant, and to deliver him or them to any constable, who is to keep him, her, or them in safe custody, and with all reasonable despatch to convey him, her, or them before any justice of the peace; and such justice shall examine upon oath any witness or witnesses who shall appear to be produced to give evidence touching such offence; and if the party accused shall be convicted of any such offence, either by his, her, or their confession, or upon such evidence as aforesaid, he, she, or they shall forfeit any sum not exceeding forty shillings for every lamp, lamp-iron, or lamp-post so broken, thrown down, or damaged, and shall also make full satisfaction for the damage which shall have been done thereby, and not exceeding five pounds for any other such offence as aforesaid, and shall also make full satisfaction for the damage which shall have been done thereby; and one moiety of such forfeiture shall be paid to the person or persons apprehending such offender, and the other moiety shall be applied for the purposes of this Act, and shall be levied and recovered in the same manner as any forfeiture is by this Act hereinbefore directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty."

Sect. 56. "If any person shall carelessly or accidentally break any of the said lamps, lamp-irons, or lamp-posts, or do any other such damage or injury as hereinbefore is mentioned, and shall not, upon demand, make satisfaction to the said inspectors for the damage or injury so done, it shall and may be lawful for any justice of the peace, upon any complaint thereof made to him upon oath, to summon the party complained of, and upon hearing the parties upon both sides, or on the non-appearance of the party complained of, to examine the matter of complaint, and award such sum of money, by way of satisfaction to the said

inspectors for such damage, as such justice shall think reasonable; and in case of neglect or refusal forthwith to pay such money, then the same and all expenses attending the recovery thereof may be levied and recovered as any forfeiture is by this Act hereinbefore directed to be levied and recovered in the case of any person assaulting any watchman or other person in the execution of his duty."

Sect. 57. "It shall and may be lawful to and for the said inspectors from time to time to enter into any contract or contracts with any person, company, or companies whatsoever, for lighting the same streets, roads, and other places, or any of them, or any part thereof, either with oil or with gas, or with any other material, or in any other manner whatsoever, or for furnishing lamps, lamp-irons, lamp-posts, watch-boxes, posts, chains, pales, rails, and other things necessary for the purposes aforesaid, or any materials for the same; which contract or contracts shall specify the several works to be done and the prices to be paid for the same, and the time or times when the works shall be completed, and the penalties to be suffered in cases of non-performance thereof, and shall be signed by two or more of the said inspectors, and also by the person or persons contracting to perform such works respectively, which contract or contracts, or a copy or copies thereof, shall be entered in a book to be kept for that purpose; but no contract above the value or sum of twenty pounds shall be entered into, unless previous to the making of any such contract fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the said parish shall be situate, expressing the intention of entering into such contract, in order that any person or persons willing to undertake the same may make proposals for that purpose, to be offered and presented to the said inspectors at a certain time and place in such notice to be mentioned: Provided always, that if the said inspectors shall be of opinion that it will not be advantageous to contract with the person or persons offering the lowest price, it shall be lawful for the said inspectors to contract with such other person or persons as they shall think proper." (a)

Sect. 58. "In case the same shall not be well and sufficiently performed, according to the terms, intent, and meaning of such contract or contracts, or shall not be finished or completed at or within the time or times specified in such contract or contracts, then the said inspectors may cause an action to be brought in any of his Majesty's courts of law at Westminster against any such contractor, for any penalty contained in his contract; and on proof of his signing the said contract or contracts, or non-performance thereof at the time or times for that purpose to be therein mentioned, the said inspectors shall be entitled to and recover the full penalty contained in any such contract, which, when recovered, shall be applied for the purposes of this Act: Provided always, that it shall be lawful for the said inspectors (if they think fit) to compound and agree with any contractor for any penalty incurred by him for the breach or non-performance of any such contract, for such sum of money as the said inspectors shall think proper, not being less than the injury or damage sustained by the breach or non-performance of such contract, and all costs, charges, and expenses which shall be occasioned thereby; and it shall be lawful for the said inspectors to cancel or make void any contract with any person or persons whomsoever, by mutual consent, if they shall think proper."

Sect. 59. "The said inspectors may, and they are hereby authorized and empowered to treat with the owner or owners and occupier or occu-

2. By  
Statute.

3 & 4 Will. 4,  
c. 90.

Power for inspectors to contract for the works directed to be done by this Act.

Inspectors may sue for breach of contract;

or may compound with contractor;

or contract may be cancelled.

Inspectors may purchase or rent ground or buildings for the purposes of this Act.

(a) As power is given by sect. 15 to the ratepayers, to abandon the provisions of this Act, it would not be advisable for the inspectors to enter into

any contract for a longer time than they themselves are to continue in office. (*Tidd Pratt's Notes*, p. 45.)

## 2. By Statute.

3 &amp; 4 Will. 4, c. 90.

Property of lamps, etc., vested in the inspectors.

Actions, etc., to be brought in name of inspectors.

Inspectors of adjoining parishes may unite.

Forms of information and conviction.

Form of information.

Form of conviction.

piers of any houses, buildings, lands, and grounds, for the purposes of this Act, for such sum or sums of money, or yearly rent, or for such time as to them shall appear reasonable (which sum or sums of money and yearly rent shall be respectively paid out of the moneys to arise by virtue of this Act), in such place or places as they may think proper."

Sect. 60. "The property of and in all lamps, lamp irons, lamp posts, watch-houses, watch-boxes, posts, chains, pales, and rails in, about, or belonging to the said streets and places within any parish or part of a parish adopting the provisions of this Act, or any of them, and of and in all the iron, timber, stones, bricks, and other materials and furniture and things of, in, and belonging thereto (except when the same shall be otherwise regulated by contract with the said inspectors), shall be, and the same are hereby vested in the said inspectors, and may be sold and disposed of from time to time, as they shall think proper; and the money arising from such sale or sales shall be applied towards the purposes of this Act; and the said inspectors are hereby authorized and empowered to bring or cause to be brought any action or actions in such name or names and in manner as herein is provided, or to prefer or order and direct the preferring of any bill or bills of indictment against any person or persons who shall steal, take, or carry away (as the case may be) all or any part of such lamp irons, lamp posts, watch-houses, watch-boxes, iron, timber, and stone, bricks, furniture, posts, chains, pales, rails, or other materials and things as aforesaid; and in all such actions or bills of indictment it shall be, and be deemed and taken to be, sufficient to state generally that the article or articles, thing or things, for or on account of which such action or actions shall be brought, or such bill or bills of indictment preferred, is or are the property of the inspectors, without particularly stating or specifying the name or names of all or any of the said inspectors."

Sect. 61. "It shall be lawful for the inspectors appointed by any parish adopting the provisions of this Act, to unite with the inspectors of any adjoining parish or parishes, for the better carrying into effect the purposes of this Act."

Sect. 62. "And for the more easy prosecution and conviction of offenders against this Act, be it further enacted, that all and every justices and justice of the peace before whom any person or persons shall be convicted or prosecuted for any offence against this Act, shall and may cause the information and conviction respectively to be drawn in the form following, or in other words to the same effect (that is to say):—

"County } Be it remembered, that on the                      day of                      , A. B.,  
of                      } of                      , informeth                      of his Majesty's justice [or  
to wit.                      } justices] of the peace for the said                      of                      , that  
                    of                      , in the                      of                      [here describe  
the offence, with the time and place, and follow the Act as near as may be],  
contrary to the provisions of an Act made in the                      year of the reign of  
King William the Fourth, intituled [insert the title of this Act], which hath im-  
posed a forfeiture of                      for the said offence.  
Taken the                      day of                      , before                      ,

"County } Be it remembered, that on the                      day of                      , in  
of                      } the                      year of the reign of                      , and in the year of  
to wit.                      } our Lord                      , A. B. is convicted before                      of his  
Majesty's justice [or justices] of the peace for the said                      , for [here  
specify the offence, and when and where committed], contrary to the form of  
the statute made in the                      year of the reign of King William the Fourth,  
intituled [here set forth the title of this Act]; and                      do hereby declare  
and adjudge that the said                      hath forfeited for the said offence the sum  
of                      [or shall be committed to                      for the space of                      ,  
as the case may be].  
Given under                      hand and seal the day and year first above written.

Sect. 63. "All fines, penalties, and forfeitures inflicted or imposed by this Act, or by virtue of any rule or order made in pursuance hereof (the mode of recovery whereof is not herein otherwise provided for), may, in case of non-payment thereof be recovered in a summary way, by order and adjudication of any two justices of the peace, on complaint to them for that purpose exhibited, and afterwards be levied, as well as the costs (if any) of such proceedings, on non-payment, by distress and sale of the goods and chattels of the offender or respective offenders, or person or persons liable to pay the same, by warrant under the hands and seals of such justices, who are hereby authorized and required to summon and examine any witness upon oath or affirmation of and concerning such offences, matters, and things, and to hear and determine the same; and the overplus (if any) of the money raised or recovered, after discharging the fine, penalty, or forfeiture for which such warrant shall be issued, and the costs and expenses of recovering and levying the same (if any such there be), shall be rendered to the owner or owners of the goods and chattels so seized and distrained; all which penalties, not herein directed to be otherwise applied, shall be paid to the said inspectors or their treasurer, to be applied for such purposes of this Act as the said inspectors shall order and direct, except in all such cases where the penalty or forfeiture shall be incurred by the said inspectors, and then the same shall be paid to the informer; and it shall be lawful for the said justices to order the offender or offenders so convicted to be detained in safe custody until return can be conveniently made to such warrant or warrants of distress, unless the said offender or offenders shall give sufficient security, to the satisfaction of such justices, for his, her, or their appearance before the said justices, on such day or days as shall be appointed for the return of such warrant or warrants of distress, such day or days not being more than seven days from the time of taking such security, and which security the said justices are hereby empowered to take by way of recognizance or otherwise; but if upon the return of such warrant or warrants it shall appear that no sufficient distress can be had whereupon to levy the said penalty or penalties, and such costs as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of any such justices, upon the confession of the offender or offenders, or otherwise, that he, she, or they have or hath not sufficient goods and chattels whereupon such penalties, forfeitures, costs, and expenses can be levied if a warrant of distress were issued, such justices shall not be required to issue such warrant of distress, and thereupon it shall be lawful for such justices, and they are hereby required and empowered, by warrant or warrants under their hands and seals, to commit such offender or offenders to the common gaol or house of correction in the said county or place in which the said parish shall be situate, there to be kept, with or without hard labour, without bail or mainprize, for any time not exceeding six calendar months, or until such offender or offenders shall have paid such penalty or penalties, and all costs and charges attending such proceedings as aforesaid, to be ascertained by such justices, or shall otherwise be discharged by due course of law."

Sect. 64. Provided always, "That nothing herein contained shall be deemed, construed, or taken to extend to render the said inspectors personally, or any of their goods and chattels (other than such as may be invested in them in pursuance of this Act) liable to the payment of any sum or sums of money as or by way of compensation or satisfaction in the cases in which such compensation or satisfaction is herein directed to be made by the said inspectors."

Sect. 65. "No inhabitant of any parish adopting the provisions of this Act shall be deemed an incompetent witness in any action, suit or information, complaint, appeal, prosecution, or proceedings to be had, made, prosecuted, or carried on under the authority of this Act."

Sect. 66. Provided also, "That if any person or persons shall find

## 2. By Statute.

3 & 4 Will. 4, c. 90.

Recovery and application of penalties.

Penalties how applied.

Offender may be detained till return made to warrant of distress.

If not sufficient distress, etc.

Offender may be sent to common gaol, etc., for not exceeding six months.

Inspectors exempted from personal liability.

Inhabitants may be witnesses.

Appeal to the quarter sessions

2. By  
Statute.

3 & 4 Will. 4.  
c. 90.

against order of  
inspectors, etc.,  
within four ca-  
lendar months  
after cause of  
complaint, etc.

Fourteen days'  
notice in writing  
to be given to  
inspectors, etc.,

\* and.

and recognizance  
to be entered  
into.

Appeals against  
rate to be subject  
to same rules as  
appeals against  
poor rates.

Plaintiff not to  
recover in any  
action after ten-  
der of sufficient  
amends.

Limitation of  
actions (a).

himself, herself, or themselves aggrieved by any order, direction, or appointment of the said inspectors, or any order or conviction of one or more justice or justices of the peace, it shall be lawful for such person or persons to appeal to any general or quarterly sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situate, within four calendar months next after the cause of complaint shall have arisen, or if such sessions shall be held before the expiration of one calendar month, then such appeal shall be made to the secondly succeeding sessions, either of which court of sessions is hereby empowered to hear and finally determine the matter of the said appeal, and to make such order therein as to them shall seem meet, which order shall be final and conclusive to and upon all parties; provided that the person or persons so appealing shall give or cause to be given at least fourteen days' notice in writing of his, her, or their intention of appealing as aforesaid, and of the matter or cause thereof to the said inspectors, or other the respondent or respondents, that\* within five days after such notice shall enter into a recognizance before some justice of the peace, with sufficient securities conditioned to try such appeal at the then next general sessions or quarter sessions of the peace, which shall first happen, and to abide the order of and pay such costs as shall be awarded by the justices at such quarter sessions or any adjournment thereof; and such justices, upon hearing and finally determining such matter of appeal, shall and may, according to their discretion, award such costs to the party appealing or appealed against as they shall think proper; and their determination in or concerning the premises shall be conclusive and binding on all parties to all intents and purposes whatsoever." (See *post*, Form No. 21; as to appeals in general, see tit. "*Appeal*," Vol. I.)

Sect. 67. Provided also, "That if any person or persons shall find himself, herself, or themselves aggrieved by any rate made by the overseers of the poor for the purposes of this Act, he, she, and they may appeal to any general or quarterly sessions of the peace to be held in and for the county, city, riding, borough, town, shire, division, liberty, or place in which the parish shall be situated; and all such appeals shall be subject to the same rules, regulations, provisions, and directions, and shall be prosecuted and proceeded with in the like manner as appeals against rates made for the relief of the poor in such parish."

Sect. 68. Provided also, "That no plaintiff or plaintiffs shall recover in any action or actions for any irregularity, trespass, or other proceedings made or committed in execution of this Act, if tender of sufficient amends shall be made by or on behalf of the party or parties who shall have committed any such irregularity, trespass, or wrongful proceedings before such action brought; and in case no tender shall have been made, it shall be lawful for the defendant or defendants in any such action, by leave of the Court where such action shall depend, at any time before issue joined, to pay into Court such sum of money as he or they shall think fit, whereupon such proceedings, order, and adjudication shall be made, had, and given in and by such Court as in other actions where the defendant is allowed to pay money into Court."

Sect. 69. "No action or suit shall be commenced against any person or persons for anything done in pursuance of or under the authority of

(a) As to clauses of this description in general, see tits. "*Justices*," ante, "*Constable*," Vol. I. See *Butler v. Ford*, 1 C. & M. 671. In *Burns v. Carter* (3 M. & P. 1; 5 Bing. 429, S. C.) it was held, that the time limited for the commencement of ac-

tions for anything done in pursuance of any local paving Act, was regulated by the Metropolis General Paving Act, 57 Geo. 3, c. 29, s. 136, which in effect repealed the clause in the Clink Liberty Paving Act, 52 Geo. 3, c. 14, s. 122.

or colour of this Act, until twenty-one days' notice has been given thereof in writing to the said inspectors, nor after sufficient satisfaction or tender thereof has been made to the party or parties aggrieved, nor after six calendar months next after the fact committed for which such action or actions, suit or suits, shall be so brought; and every such action shall be brought, laid, and tried where the cause of action shall have arisen, and not in any other county or place; and the defendant or defendants in such actions or suits may plead the general issue, or give this Act and every special matter in evidence, at any trial or trials which shall be had thereupon; and if the matter or thing shall appear to have been done under or by virtue of this Act, or if it shall appear that such action or suit was brought before twenty-one days' notice thereof was given as aforesaid, or if any action or suit shall not be commenced within the time before limited, or shall be laid in any other county or place than as aforesaid, then the jury or juries shall find a verdict for the defendant or defendants therein; and if a verdict or verdicts shall be found for any such defendant or defendants, or if the plaintiff or plaintiffs in such action or actions, suit or suits, shall become nonsuit, or suffer a discontinuance of such action or actions, or if, upon any demurrer or demurrers in such action or actions, judgment shall be given for the defendant or defendants therein, then and in any of the cases aforesaid such defendant or defendants shall have double costs, and shall have such remedy for recovering the same as any defendant or defendants may have for his, her, or their costs in any other case by law." [But now by the 5 & 6 Vict. c. 97, s. 2, the defendant shall have only such costs taxed to him as will fully indemnify him.]

2. *By Statute.*

3 & 4 Will. 4, c. 90.  
Notice of.  
Tender of amends.  
Venue.  
General issue.

Double costs.

Sect. 70. "No proceedings to be had and taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by *certiorari* or any other writ or process whatsoever into any of his Majesty's courts of record at Westminster or elsewhere." (As to clauses of this description, see tit. "*Conviction*," Vol. I.)

Proceedings not to be unlawful for want of form. *Certiorari*.

Sect. 71. "The provisions of this Act may be adopted in any parish either as to lighting or as to watching, or as to lighting and watching, as may be deemed expedient; and the provisions of this Act may be adopted in any parish so far as the same relate to lighting, although such parish shall be watched under or by virtue of any Act of Parliament passed for that purpose, and may be adopted in any parish so far as the same relate to watching, although such parish shall be lighted under or by virtue of any Act of Parliament passed for that purpose."

Parishes may adopt only parts of Act.

Sect. 72. "Nothing in this Act contained shall be construed to extend to abridge, repeal, alter, amend, or interfere with the powers and provisions contained in an Act made and passed in the tenth year of the reign of his late Majesty King George the Fourth, intituled 'An Act for Improving the Police in and near the Metropolis,' or to extend to any parish or place already regulated by or under the provisions of any Act of Parliament for all the purposes hereinbefore provided for, or to interfere with the powers which any corporate body may have with respect to watching and lighting."

Limiting the powers of the Act.

10 Geo. 4, c. 44.

Sect. 73. "It shall and may be lawful to and for the inhabitants of part of any parish to hold a meeting of the inhabitants of such part, to be convened in manner herein directed, and to be composed of such inhabitants only, for the purpose of determining whether the provisions in this Act contained, or any of them, shall be adopted and carried into execution in such part of the said parish; and that all such meetings shall be subject and liable to all the clauses, regulations, and restrictions in this Act contained in respect of meetings to be convened for the purpose

Parts of parishes may adopt the provisions of this Act.



2. By  
Statute.3 & 4 Will. 4,  
c. 90.but not to inter-  
fere with any  
local Act.Surveyor of com-  
missioners of  
sewers may enter  
into gas works,  
to see if there be  
any escape of  
gas, etc.Not to prejudice  
the rights of the  
commissioners of  
sewers;nor to affect the  
Universities.Construction of  
Act.

thereof; and that the churchwardens of the said parish (a) shall act in the same manner for such part of the parish, the inhabitants of which may be desirous of adopting the provisions of this Act, for carrying the provisions of the same into effect, as they could by virtue hereof act for the parish at large; and that the overseers of the poor of the said parish, or of any township or division of the said parish, shall be amenable to the provisions of this Act, so far as they may relate to the part of such parish situate within or partly within the division or district for which such overseers shall act, for the purpose of levying, raising, and paying the rates within the part of such parish adopting the provisions of this Act, in the same manner as they would be if the whole parish, township, or place for which they act had adopted the provisions of this Act: Provided always that no proceedings of the said inhabitants, nor any rate to be raised or levied in pursuance of such proceedings shall extend to any part of the said parish which may already be regulated by or under the provisions of any Act for the purposes in this Act mentioned, nor interfere with the powers and provisions of such Act or the execution thereof in any respect whatsoever."

Sect. 74. "It shall be lawful for any surveyor or other person or persons acting by or under the authority of commissioners of sewers, at any time or times in the daytime, to enter into any manufactory, gasometer, receiver, or other building belonging to any gas company or companies, or the said inspectors, in order to inspect and examine if there be any escape of gas, or any washings or other waste liquids, substances, or other things whatsoever, which shall arise or be produced in the prosecution of the said gas works, or in the manufacture or process of making or procuring such gas, into any public sewer or drain; and if such surveyor or other person or persons acting by or under the authority of commissioners of sewers shall at any such time or times be refused admittance or entrance into any such manufactory, gasometer, receiver, or other building, for the purpose of making such inspection and examination as aforesaid, or on being admitted shall be obstructed in or prevented from making such inspection and examination as aforesaid, the said gas company or companies, or the said inspector, so offending, shall forfeit and pay for every such offence the sum of £20."

Sect. 75. Provided always, "That nothing in this Act contained shall extend, or be deemed or construed to extend, to prejudice, diminish, alter, or take away any of the rights, powers, or authorities vested in commissioners of sewers, but all the rights, powers, and authorities vested in them shall be as good, valid, and effectual as if this Act had not been made."

Sect. 76. Provided always, "That nothing in this Act contained shall extend to alter or in any manner to affect any of the rights or privileges of the Universities of Oxford or Cambridge, or any of the powers vested by charter or otherwise in the chancellors, masters, and scholars, and their successors, of the said Universities."

Sect. 77. "The powers given to watch and light any parish shall be understood to be given to any wapentake, division, city, borough, liberty, township, market town, franchise, hamlet, tithing, precinct, and chapelry, or parts within the same; and that where the word 'parish' is used, it shall be understood to extend to any parts within the same; and that the powers given to a churchwarden shall be understood to be given to any chapelwarden, overseer, or other person usually calling any meeting on parochial business; and that the words 'justice of the peace' shall be understood to mean justices of the peace for the county, city, borough, town, division, riding, shire, liberty, or place in which the parish which

(a) See *Reg. v. Kingswinford*, ante, note (b), p. 364.

may adopt the provisions of this Act shall be situate; and the word 'rate-payer' to include all persons assessed to and paying rates for the relief of the poor."

3. *The Gasworks Clauses Act.*

Sect. 78. "This Act shall be deemed and taken to be a public Act, and shall be judicially taken notice of as such by all judges, justices, and others, without being specially pleaded."

3 & 4 Will. 4,  
c. 90.  
Public Act.

### III. The Gasworks Clauses Act.

By the 10 Vict. c. 15, after reciting that it is expedient to comprise in one general Act sundry provisions usually contained in Acts of Parliament authorizing the construction of gasworks for supplying towns with gas; and that, as well for avoiding the necessity of repealing such provisions in each of the several Acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves, it is expedient to enact and it is enacted as follows:—

1. This Act shall extend only to such gasworks as shall be authorized by any Act of Parliament hereafter to be passed which shall declare that this Act shall be incorporated therewith, and all the clauses of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other Act which shall be incorporated therewith, form part of such Act, and be construed therewith as forming one Act.

Extent of Act.

And with respect to the construction of this Act, and any Act incorporated therewith, be it enacted as follows:—

Interpretations  
in this Act.

2. The expression "the special Act," used in this Act, shall be construed to mean any Act which shall be hereafter passed authorizing the construction of gasworks, and with which this Act shall be so incorporated as aforesaid; and the word "prescribed," used in this Act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special Act, and the sentence in which such word occurs shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special Act" had been used; and the expression "the lands" shall mean the lands which shall by the special Act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the gasworks and the works connected therewith by the special Act authorized to be constructed; and the expression "the undertakers" shall mean the persons by the special Act authorized to construct the gasworks.

"Special Act."

"Prescribed."

"The lands."

"The undertaking."

"The undertakers."

3. The following words and expressions in both this and the special Act, and any Act incorporated therewith, shall have the meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction (that is to say):—

Interpretations  
in this and the  
special Act.

Words importing the single number only shall include the plural number, and words importing the plural number only shall include also the singular number.

Number.

Words importing the masculine gender shall include females.

Gender.

The word "person" shall include corporation, whether aggregate or sole.

"Person."

The word "lands" shall include messuages, lands, tenements, and hereditaments or heritages of any tenure.

"Lands."

3. *The Gasworks Clauses Act.*

"Street."

"The gasworks."

"Gas rate."

"Month."

"Superior Courts."

"Oath."

"County."

"Justice."

"Two justices."

"Sheriff."

"Quarter Sessions."

The word "street" shall include any square, court, or alley, highway, lane, road, thoroughfare, or public passage or place within the limits of the special Act.

The expression "the gasworks" shall mean the gasworks and the works connected therewith by the special Act authorized to be constructed.

The expression "gas rate" shall include any rent, reward, or payment to be made to the undertakers for a supply of gas.

The word "month" shall mean calendar month.

The expression "superior Courts," where the matter submitted to the cognizance of the superior Courts arises in England or Ireland, shall mean her Majesty's superior Courts of record at Westminster or Dublin, as the case may require, and shall include the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county of Durham; and where such matter arises in Scotland, it shall mean the Court of Session.

The word "oath" shall include affirmation in the case of Quakers, and any declaration lawfully substituted for an oath in the case of any other persons allowed by law to make a declaration instead of taking an oath.

The word "county" shall include riding or other division of a county having a separate commission of the peace, and in Scotland stewartry, and any ward or other division of a county or stewartry having a separate sheriff; and it shall also include county of a city or county of a town.

The word "justice" shall mean justice of the peace acting for the place where the matter requiring the cognizance of any such justice arises; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two or more justices met and acting together.

The word "sheriff" shall mean the sheriff depute of the county or ward of a county in Scotland, and the steward depute of the stewartry in Scotland in which the matter submitted to the cognizance of the sheriff arises, and shall include the substitutes of such sheriff depute and steward depute respectively.

The expression "quarter sessions" shall mean quarter sessions as defined in the special Act; and if such expression be not there defined, it shall mean the Court of general or quarter sessions of the peace which shall be held at the place nearest to the gasworks, or the principal office thereof, for the county or place in which the gasworks are situate, or for some division of such county having a separate commission of the peace.

*Citing the Act.*—And with respect to citing this Act, or any part thereof, be it enacted as follows:—

Short title of the Act.

4. In citing this Act in other Acts of Parliament, and in legal instruments, it shall be enough to use the expression "The Gasworks Clauses Act, 1847."

Form in which portions of this Act may be incorporated in other Acts.

5. For the purpose of incorporating part only of this Act with any Act hereafter to be passed, it shall be enough to describe the clauses of this Act with respect to any matter in the words introductory to the enactment with respect to such matter, and to enact that the clauses so described, or that this Act, with the exception of the clauses so described, shall be incorporated with such Act, and thereupon all the clauses of this Act so incorporated shall, save so far as they are expressly varied

or excepted by such Act, form part of such Act; and such Act shall be construed as if such clauses were set forth therein with reference to the matter to which such Act relates.

3. *The Gas-works Clauses Act.*

*Laying of Pipes.*]—And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows:—

6. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special Act, and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works, and from time to time repair, alter, or remove the same, and also make any sewers that may be necessary for carrying off the washings and waste liquids which may arise in the making of the gas, and for the purposes aforesaid may remove and use all earth and materials in and under such streets and bridges, and they may in such streets erect any pillars, lamps, and other works, and do all other acts which the undertakers shall from time to time deem necessary for supplying gas to the inhabitants of the district included within the said limits, doing as little damage as may be in the execution of the powers hereby or by the special Act granted, and making compensation for any damage which may be done in the execution of such powers.

Power to break up streets, etc., under superintendence, and to open drains (a).

7. Provided always, that nothing herein shall authorize or empower the undertakers to lay down or place any pipe or other works into, through, or against any building, or in any land not dedicated to public use, without the consent of the owners and occupiers thereof; except that the undertakers may at any time enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special Act, or any other Act of Parliament, and may repair or alter any pipe so laid down.

Not to enter on private lands without consent.

8. Before the undertakers proceed to open or break up any street, bridge, sewer, drain, or tunnel, they shall give to the persons under whose control or management the same may be, or to their clerk, surveyor, or other officer, notice in writing of their intention to open or break up the same, not less than three clear days before beginning such work, except in cases of emergency arising from defects in any of the pipes or other works, and then so soon as is possible after the beginning of the work, or the necessity for the same shall have arisen.

Notice to be served on persons having control, etc., before breaking up streets or opening drains.

9. No such street, bridge, sewer, drain, or tunnel shall, except in the cases of emergency aforesaid, be opened or broken up, except under the superintendence of the persons having the control or management thereof, or of their officer, and according to such plan as shall be approved of by such persons or their officer, or in case of any difference respecting such plan, then according to such plan as shall be determined by two justices; and such justices may, on the application of the persons having the control or management of any such sewer or drain, or their officer, require the undertakers to make such temporary or other works as they may think necessary for guarding against any interruption of the drainage during the execution of any works which interfere with any such sewer or drain: Provided always, that if the persons having such control or

Streets or drains not to be broken up except under superintendence of persons having control of the same.

(a) A gas company without any Parliamentary powers has no authority to open streets for the purpose of laying down pipes; and, if the streets are broken up for such purposes, both

the company and also any householder who authorizes such acts are indictable. (*Reg. v. Longton Gas Company*, 29 *L. J.*, *M. C.* 118.)

If persons having the control, etc., fail to superintend, undertakers may perform the work without them.

8. *The Gas-works Clauses Act.*

management as aforesaid, and their officer, fail to attend at the time fixed for the opening of any such street, bridge, sewer, drain, or tunnel, after having had such notice of the undertakers' intention as aforesaid, or shall not propose any plan for breaking up or opening the same, or shall refuse or neglect to superintend the operation, the undertakers may perform the work specified in such notice without the superintendence of such persons or their officer.

Streets, etc., broken up to be reinstated without delay.

10. When the undertakers open or break up the road or pavement of any street or bridge, or any sewer, drain, or tunnel, they shall with all convenient speed complete the work for which the same shall be broken up, and fill in the ground, and reinstate and make good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, and carry away the rubbish occasioned thereby, and shall at all times, whilst any such road or pavement shall be so opened or broken up, cause the same to be fenced and guarded, and shall cause a light sufficient for the warning of passengers to be set up and maintained against or near such road or pavement where the same shall be open or broken up, every night during which the same shall be continued open or broken up, and shall keep the road or pavement which has been so broken up in good repair for three months after replacing and making good the same, and for such further time, if any, not being more than twelve months in the whole, as the soil so broken up shall continue to subside.

Penalty for delay in reinstating streets, etc.

11. If the undertakers open or break up any street or bridge, or any sewer, drain, or tunnel, without giving such notice as aforesaid, or in a manner different from that which shall have been approved of or determined as aforesaid, or without making such temporary or other works as aforesaid when so required,—except in the cases in which the undertakers are hereby authorized to perform such works without any superintendence or notice, or if the undertakers make any delay in completing any such work, or in filling in the ground, or reinstating and making good the road or pavement, or the sewer, drain, or tunnel, so opened or broken up, or in carrying away the rubbish occasioned thereby, or if they neglect to cause the place where such road or pavement has been broken up to be fenced, guarded and lighted, or neglect to keep the road or pavement in repair for the space of three months next after the same is made good, or such further time as aforesaid, they shall forfeit to the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such default is made, a sum not exceeding five pounds for every such offence, and they shall forfeit an additional sum of five pounds for each day during which any such delay as aforesaid shall continue after they shall have received notice thereof.

In case of delay, other parties may reinstate and recover the expenses.

12. If any such delay or omission as aforesaid take place, the persons having the control or management of the street, bridge, sewer, drain, or tunnel in respect of which such delay or omission shall take place, may cause the work so delayed or omitted to be executed, and the expense of executing the same shall be repaid to such persons by the undertakers; and such expenses may be recovered in the same manner as damages are recoverable under this or the special Act.

*Supply of Gas.*—And with respect to the supply of gas, and the recovery of the rent to be paid for the same, be it enacted as follows:—

Power of the company to contract for lighting streets, etc.

13. The undertakers may from time to time enter into any contract with any person for lighting or supplying with gas any public or private building, or for providing any person with pipes, burners, meters, and lamps, and for the repair thereof; and may also from time to time enter into any contract with the commissioners, trustees, or other persons having the control of the streets within the limits of the special Act for lighting the same or any of them with gas, and for providing such com-

missioners, trustees, or persons with lamps, lamp posts, burners, and pipes for such purpose, and for the repairs thereof, in such manner and upon such terms as shall be agreed upon between the undertakers and the said commissioners, trustees, or other persons.

8. *The Gas-works Clauses Act.*

14. The undertakers may let for hire any meter for ascertaining the quantity of gas consumed or supplied, and any fittings for the gas, for such remuneration in money as shall be agreed upon between the undertakers and any person to whom the same may be so let, and such remuneration shall be recoverable in the same manner as the rents or sums due to the undertakers for gas, and such meters and fittings shall not be subject to distress, or to the landlord's hypothec for rent of the premises where the same may be used, nor to be taken in execution under any process of a Court of law or equity, or any fiat or sequestration in bankruptcy against the person in whose possession the same may be.

Power to undertakers to let meters.

Meters not liable to distraint for rent, etc.

15. The clerk, engineer, or other officer duly appointed for the purpose by the undertakers may at all reasonable times enter any building or place lighted with gas supplied by the undertakers, in order to inspect the meters, fittings, and works for regulating the supply of gas, and for the purpose of ascertaining the quantity of gas consumed or supplied; and if any person hinder such officer as aforesaid from entering and making such inspection as aforesaid at any reasonable time, he shall for every such offence forfeit to the undertakers a sum not exceeding five pounds.

Undertakers may enter buildings for ascertaining quantities of gas consumed.

16. If any person supplied with gas by virtue of this or the special Act neglect to pay the rent due for the same to the undertakers, the undertakers may stop the gas from entering the premises of such person, by cutting off the service pipe, or by such means as the undertakers shall think fit, and recover the rent due from such person, if less than twenty pounds, together with the expense of cutting off the gas, and the costs of recovering the rent, in the same manner as any damages for the recovery of which no special provision is made are recoverable under this or the special Act, or if the rent so due amount to twenty pounds or upwards, the undertakers may recover the same, together with the expenses of cutting off the gas, by action in any Court of competent jurisdiction.

Recovery of rents due for gas.

17. In all cases in which the undertakers are authorized to cut off and take away the supply of gas from any house or building or premises, under the provisions of this or the special Act, the undertakers, their agents or workmen, after giving twenty-four hours' previous notice to the occupier, may enter into any such house, building, or premises, between the hours of nine in the forenoon and four in the afternoon, and remove and carry away any pipe, meter, fittings, or other works the property of the undertakers.

Power to take away pipes, etc., when supply of gas discontinued.

*Undue use of Gas.*—And with respect to waste or misuse of the gas, or injury to the pipes and other works, be it enacted as follows:—

18. Every person who shall lay or cause to be laid any pipe to communicate with any pipe belonging to the undertakers without their consent, or shall fraudulently injure any such meter as aforesaid, or who, in case the gas supplied by the undertakers is not ascertained by meter, shall use any burner other than such as has been provided or approved of by the undertakers, or of larger dimensions than he has contracted to pay for, or shall keep the lights burning for a longer time than he has contracted to pay for, or who shall otherwise improperly use or burn such gas, or shall supply any other person with any part of the gas supplied to him by the undertakers, shall forfeit to the undertakers the sum of five pounds for every such offence, and also the sum of forty shillings for every day such

Penalty for fraudulently using the gas of the undertakers.

3. *The Gas-works Clauses Act.*

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Penalty for wilfully damaging pipes.

pipe shall so remain, or such works or burner shall be so used, or such excess be so committed or continued, or such supply furnished; and the undertakers may take off the gas from the house and premises of the person so offending, notwithstanding any contract which may have been previously entered into.

Satisfaction for accidentally damaging pipes.

19. Every person who shall wilfully remove, destroy, or damage any pipe, pillar, post, plug, lamp, or other work of the undertakers for supplying gas, or who shall wilfully extinguish any of the public lamps or lights, or waste or improperly use any of the gas supplied by the undertakers, shall for each such offence forfeit to the undertakers any sum not exceeding five pounds, in addition to the amount of the damage done.

20. Every person who shall carelessly or accidentally break, throw down, or damage any pipe, pillar, or lamp belonging to the undertakers, or under their control, shall pay such sum of money by way of satisfaction to the undertakers for the damage done, not exceeding five pounds, as any two justices or the sheriff shall think reasonable.

*Nuisance from gas.*—And with respect to the provision for guarding against fouling water, or other nuisance from the gas, be it enacted as follows:—

Penalty on undertakers for causing water to be corrupted.

21. If the undertakers shall at any time cause or suffer to be brought or to flow into any stream, reservoir, or aqueduct, pond or place for water, or into any drain communicating therewith, any washing or other substance produced in making or supplying gas, or shall wilfully do any act connected with the making or supplying of gas whereby the water in any such stream, reservoir, aqueduct, pond, or place for water shall be fouled, the undertakers shall forfeit for every such offence the sum of two hundred pounds.

Penalty to be sued for in superior Court within six months.

22. The said penalty of two hundred pounds shall be recovered, with full costs of suit, in any of the superior Courts, by the person into whose water such washing or other substance shall be conveyed or shall flow, or whose water shall be fouled by any such act as aforesaid; but such penalty shall not be recoverable unless it be sued for during the continuance of the offence, or within six months after it shall have ceased.

Daily penalty during the continuance of the offence.

23. In addition to the said penalty of two hundred pounds (and whether such penalty shall have been recovered or not) the undertakers shall forfeit the sum of twenty pounds (to be recovered in the like manner) for each day during which such washing or other substance shall be brought or shall flow as aforesaid, or the act by which such water shall be fouled shall continue, after the expiration of twenty-four hours from the time when notice of the offence shall have been served on the undertakers by the person into whose water such washing or other substance shall be brought or shall flow, or whose water shall be fouled thereby, and such penalty shall be paid to such last-mentioned person.

Daily penalty during escape of gas after notice.

24. Whenever any gas shall escape from any pipe laid down or set up by or belonging to the undertakers, they shall, immediately after receiving notice thereof in writing, prevent such gas from escaping; and in case the undertakers shall not within twenty-four hours next after service of such notice effectually prevent the gas from escaping, and wholly remove the cause of complaint, they shall for every such offence forfeit the sum of five pounds for each day during which the gas shall be suffered to escape after the expiration of twenty-four hours from the service of such notice.

Penalty if water contaminated by gas.

25. Whenever any water within the limits of the special Act shall be fouled by the gas of the undertakers, they shall forfeit to the person

whose water shall be so fouled for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for each day during which the offence shall continue after the expiration of twenty-four hours from the service of notice of such offence.

3. *The Gas-works Clauses Act.*

26. For the purpose of ascertaining whether such water be fouled by the gas of the undertakers the person to whom the water supposed to be fouled shall belong may dig up the ground and examine the pipes, conduits, and works of the undertakers: Provided that such person, before proceeding so to dig and examine, shall give twenty-four hours' notice in writing to the undertakers of the time at which such digging and examination is intended to take place, and shall give the like notice to the persons having the control or management of the road, pavement, or place where such digging is to take place; and they shall be subject to the like obligation of reinstating the said road and pavement, and the same penalties for delay or any nonfeasance or misfeasance therein, as are hereinbefore provided with respect to roads and pavements broken up by the undertakers for the purpose of laying their pipes.

Power to examine gas pipes to ascertain cause of contamination, if notice be given of the same.

27. If, upon any such examination, it appear that such water has been fouled by any gas belonging to the undertakers, the expenses of the digging, examination, and repair of the street or place disturbed in any such examination shall be paid by the undertakers; but if upon such examination it appear that the water has not been fouled by the gas of the undertakers, the person causing such examination to be made shall pay all such expenses, and shall also make good to the undertakers any injury which may be occasioned to their works by such examination.

Expenses to abide result of examination.

28. The amount of the expenses of every such examination and repair, and of any injury done to the undertakers, shall, in case of any dispute about the same, together with the costs of ascertaining and recovering the same, be ascertained and recovered in the same manner as damages for the ascertaining and recovery whereof no special provision is made are to be ascertained and recovered.

How expenses to be ascertained.

29. Nothing in this or the special Act contained shall prevent the undertakers from being liable to an indictment for nuisance, or to any other legal proceeding to which they may be liable, in consequence of making or supplying gas.

Nothing to exempt undertakers from being indicted for a nuisance.

*Profits of the Company.*—And with respect to the amount of profit to be received by the undertakers when the gasworks are carried on for their benefit, be it enacted as follows:—

30. The profits of the undertaking to be divided amongst the undertakers in any year shall not exceed the prescribed rate, or where no rate is prescribed they shall not exceed the rate of ten pounds in the hundred by the year on the paid-up capital in the undertaking, which in such case shall be deemed the prescribed rate, unless a larger dividend be at any time necessary to make up the deficiency of any previous dividend which shall have fallen short of the said yearly rate.

Profits of the company limited.

31. If the clear profits of the undertaking in any year amount to a larger sum than is sufficient, after making up the deficiency in the dividends of any previous year as aforesaid, to make a dividend at the prescribed rate, the excess beyond the sum necessary for such purpose shall from time to time be invested in government or other securities; and the dividends and interest arising from such securities shall also be invested in the same or like securities, in order that the same may accumulate at compound interest until the fund so formed amounts to the prescribed sum, or if no sum be prescribed a sum equal to one-tenth of

If profits exceed the amount limited, excess to be invested and form a reserved fund.



3. *The Gas-works Clauses Act.*

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Reserved fund not to be resorted to, unless to meet an extraordinary claim.

When fund amounts to prescribed sum, interest to be applied to purposes of the undertaking.

If profits are less than the prescribed rate, a sum may be taken from the reserved fund to supply deficiency.

If profits are more than the amount prescribed, a rateable reduction to be made in the price of gas.

Court may order petitioner to pay costs of groundless petition.

Penalty on undertakers for refusing to produce books, vouchers, etc.

the nominal capital of the undertakers, which sum shall form a reserved fund to answer any deficiency which may at any time happen in the amount of divisible profits, or to meet any extraordinary claim or demand which may at any time arise against the undertakers; and if such fund be at any time reduced, it may thereafter be again restored to the said sum, and so from time to time as often as such reduction shall happen.

32. Provided always, that no sum of money shall be taken from the said fund for the purpose of meeting any extraordinary claim, unless it be first certified in England or Ireland by two justices, and in Scotland by the sheriff, that the sum so proposed to be taken is required for the purpose of meeting an extraordinary claim within the meaning of this or the special Act.

33. When such fund shall, by accumulation or otherwise, amount to the prescribed sum, or one-tenth of the nominal capital of the Company, as the case may be, the interest and dividends thereon shall no longer be invested, but shall be applied to any of the general purposes of the undertaking to which the profits thereof are applicable.

34. If in any year the profits of the undertaking divisible amongst the undertakers shall not amount to the prescribed rate, such a sum may be taken from the reserved fund as, with the actual divisible profits of such year, will enable the undertakers to make a dividend of the amount aforesaid, and so from time to time as often as the occasion shall require.

35. In England or Ireland the Court of quarter sessions, and in Scotland the sheriff, may, on the petition of any two gas-rate payers within the limits of the special Act, nominate and appoint some accountant or other competent person, not being a proprietor of any gasworks, to examine and ascertain, at the expense of the undertakers (the amount of such expense to be determined by the said Court or sheriff), the actual state and condition of the concerns of the undertakers, and to make report thereof to the said Court at the then present or some following sessions, or to the sheriff; and the said Court or sheriff may examine any witnesses upon oath touching the truth of the said accounts and the matters therein referred to; and if it thereupon appear to the said Court or sheriff that the profits of the undertakers for the preceding year have exceeded the prescribed rate, the undertakers shall, in case the whole of the said reserved fund has been and then remains invested as aforesaid, and in case dividends to the amount herein-before limited have been paid, make such a rateable reduction in the rate for gas to be furnished by them as, in the judgment of the said Court or sheriff, shall be proper, but so as such rates, when reduced, shall ensure to the undertakers (regard being had to the amount of profit before received) a profit as near as may be to the prescribed rate.

36. Provided always, that if, in the case of any petition so presented, it appear to the said Court or sheriff that there was no sufficient ground for presenting the same, the said Court or sheriff may, if they or he think fit, order the petitioner to pay the whole or any part of the costs of or incident to such petition (the amount thereof to be determined by the said Court or sheriff), and the costs so ordered to be paid shall be recoverable in the same way as damages are recoverable under this or the special Act.

37. If the undertakers shall, for seven days after being required to produce to the said Court or sheriff, or to the said accountant or other person as aforesaid, any books of account or other books, bills, receipts, vouchers, or papers relating to the pecuniary affairs of the undertakers, refuse or neglect to produce such books, bills, receipts, vouchers, or papers, they shall forfeit the sum of one hundred pounds for every such refusal

or wilful neglect, and the further sum of ten pounds for every day such refusal or wilful neglect shall continue after the expiration of the said seven days, such respective penalties to be recovered by any person who will sue for the same, with full costs of suit, in any of the superior Courts.

38. And with respect to the yearly receipt and expenditure of the undertakers, be it enacted, that the undertakers shall, in each year after they have begun to supply gas under the provisions of this or the special Act, cause an account in abstract to be prepared of the total receipts and expenditure of all rents or funds levied under the powers of this or the special Act for the year preceding, under the several distinct heads of receipt and expenditure, with a statement of the balance of such account, duly audited and certified by the chairman of the undertakers, and also by the auditors thereof, if any; and a copy of such annual accounts, if the gasworks be situated in England or Ireland, shall be transmitted free of charge to the clerk of the peace for the county in which the gasworks are situate, and if the gasworks be situated in Scotland, such copy shall be transmitted, free of charge as aforesaid, to the sheriff clerk of such county, and such transmission shall be made on or before the thirty-first day of January in each year, under a penalty of twenty pounds for each default; and the copy of such account so sent to the said clerk of the peace or sheriff clerk shall be kept by him, and shall be open to inspection by all persons at all seasonable hours on payment of one shilling for each inspection.

3. *The Gasworks Clauses Act.*

Annual account to be made up by undertakers and sent to the clerk of the peace in England or Ireland, or to the sheriff clerk in Scotland, and to be open to inspection.

39. And with respect to tender of amends, be it enacted, that if any person shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special Act, or any Act incorporated therewith, or by virtue of any power or authority thereby given, and if before action brought in respect thereof such person make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender have been made, the defendant may, by leave of the Court where such action is pending, at any time before issue joined, pay into Court such sum of money as he thinks fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into Court.

Tender of amends

*Recovery of Damages and Penalties.*—And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:—

40. If the gasworks be in England or Ireland, the clauses of “The Railways Clauses Consolidation Act, 1845,” with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, shall be incorporated with this and the special Act; and if the gasworks be in Scotland, the “Railways Clauses Consolidation Act (Scotland), 1845,” with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special Act, and such clauses shall apply to the gasworks and to the undertakers respectively, and shall be construed as if the word “undertakers” had been inserted therein instead of the word “company.”

“The Railways Clauses Consolidation Act, 1845,” as to damages, etc., to be incorporated with this and the special Act.

41. Provided always, that in Ireland, in the case of any penalty imposed by justices, where the application is not otherwise provided for, such justices may award not more than one-half of such penalty to the informer, and shall award the remainder to the guardians of the poor of the union within which the offence shall have been committed, to be applied in aid of the poor rates of such union.

In Ireland part of penalties to be paid to guardians of unions.

3. *The Gas-works Clauses Act.*

All things required to be done by two justices in England and Ireland may, in certain cases, be done by one, and in Scotland by the sheriff, etc.,

Penalties, etc., imposed in respect of offences committed within the metropolitan police district to be paid to the receiver, and applied under 2 & 3 Vict. c. 71.

Persons giving false evidence liable to penalties of perjury.

Copies of special Act to be kept by undertakers in their office, and deposited with the clerks of the peace, etc., and be open to inspection.

7 Will. 4 & 1 Vict. 83.

Penalty on undertakers failing to keep or deposit such copies.

Undertakers not exempt from the provisions of 57 Geo. 3, c. 29,

42. All things herein, or in the special Act or any Act incorporated therewith, authorized or required to be done by two justices, may and shall be done in England and Ireland by any one magistrate having by law authority to act alone for any purpose with the powers of two or more justices, and in Scotland by the sheriff or steward of any county, stewartry, or ward, or his substitute.

43. Every penalty or forfeiture imposed by this or the special Act, or any Act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an Act passed in the third year of the reign of her present Majesty, intituled "An Act for Regulating the Police Courts in the Metropolis;" and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal, and upon the same terms, as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned Act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined; and such witnesses shall be entitled to the same allowance of expenses as they would have had or been entitled to in case the order, conviction, and appeal had been made in pursuance of the provisions of the said last-mentioned Act.

44. Every person who, upon any examination upon oath under the provisions of this or the special Act, or any Act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury.

*Access to Special Act.*—And with respect to access to the special Act, be it enacted as follows:—

45. The undertakers shall at all times, after the expiration of six months after the passing of the special Act, keep in their principal office of business a copy of the special Act, printed by the printers to her Majesty, or some of them, and shall also, within the space of such six months, deposit in the office of the clerk of the peace in England or Ireland, and of the sheriff clerk in Scotland, of the county in which the undertaking is situated, a copy of such special Act so printed as aforesaid; and the said clerk of the peace and sheriff clerk shall receive, and they and the undertakers respectively shall keep, the said copies of the special Act, and shall permit all persons interested to inspect the same and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an Act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for Counties, and other persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

46. If the undertakers fail to keep or deposit as herein-before mentioned any of the said copies of the special Act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

47. And be it enacted, that nothing in this Act contained shall be deemed to exempt the undertakers from the provisions of an Act passed in the fifty-seventh year of the reign of his late Majesty King George the

Third, intituled "An Act for better Paving, Improving, and Regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein," or from the laws of sewers for the time being in force within ten miles from the Royal Exchange in the city of London.

#### 4. *Regulation of Gas Meters.*

48. And be it enacted, that nothing in this or the special Act shall be deemed to extend to or affect any Act of Parliament relating to her Majesty's duties of customs or excise, or any other revenue of the Crown, or to extend to or affect any claim of her Majesty in right of her Crown or otherwise howsoever, or any proceedings at law or in equity, by or on behalf of her Majesty, in any part of the United Kingdom of Great Britain and Ireland.

or from the laws regulating sewers.

Nothing in this or the special Act to affect the rights of the Crown.

49. And be it enacted, that nothing herein or in the special Act contained shall be deemed to exempt the undertakers from any general Act relating to gasworks, or any Act for improving the sanitary condition of towns and populous districts, which may be passed in the same session in which the special Act is passed, or any future session of Parliament.

Undertakers not exempted from provisions of any future general Act.

### IV. The Act for the Regulation of Gas Meters.

By the 22 & 23 Vict. c. 66 (*a*), after reciting that it is expedient that the measurement used in sales of gas for lighting, heating, and other purposes should be thereafter regulated by one uniform standard, and that all meters should be stamped as thereafter provided, it is enacted as follows :—

1. In construing this Act, the word "meter" shall mean gas meter, and shall include every kind of machine used for measuring gas; and the word "person" shall include corporations.

Interpretation of words "meter" and "person."

2. After the passing of this Act the only legal standard or unit of measure for the sale of gas by meter shall be the cubic foot containing 62·321 pounds avoirdupois weight of distilled or rain water, weighed in air at the temperature of sixty-two degrees of Fahrenheit's thermometer, the barometer being at thirty inches, except as relates to contracts made before the passing of this Act by which a different unit of measure is adopted, which contracts may not be renewed.

Fixing unit of measure.

3. Within three months next after the passing of this Act, models of gasholders measuring the said cubic foot, and such multiples and decimal parts of the said cubic foot as the Lord High Treasurer or the Commissioners of her Majesty's Treasury of the United Kingdom for the time being shall judge expedient, and from time to time, after the expiration of the aforesaid period of three months, models of such further multiples and decimal parts of the said cubic foot as the Lord High Treasurer or the said commissioners shall from time to time think expedient, shall be carefully made, with proper balances, indices, and apparatus for testing the measurement and registration of meters, and such models shall be verified under the direction of the Lord High Treasurer or the said com-

Models of measures to be made and verified under the direction of the Treasury.

(*a*) By the 23 & 24 Vict. c. 146, where in this Act anything is required to be done within a specified time after the passing of the same, such time shall be calculated as if the 13th day of October, 1860, had been the date of the passing of the said Act; provided always that, notwithstanding

anything in the said Act contained, the said Act shall not come into operation in any county in England until the magistrates of such county in quarter sessions shall have resolved to bring such county within the operation of the Act.

#### 4. *Regulation of Gas Meters.*

Models to be deposited.

missioners, and when so made and verified shall be deposited in the office of the Comptroller-General of the Exchequer at Westminster; and copies of the models so from time to time deposited, verified as aforesaid, shall be sent to the lord mayor of London, and the chief magistrate of Edinburgh and Dublin, and to the chief magistrate of such other cities and boroughs, and to such other places and persons in her Majesty's dominions as the said Lord High Treasurer or the aforesaid commissioners may from time to time direct; and the said Lord High Treasurer or the said commissioners shall appoint a competent person or persons to design and make, subject to the approval and by direction of such Lord High Treasurer or the said commissioners, stamps of a uniform design to be used for stamping meters throughout the United Kingdom, with only such variations of numbers or marks thereon as shall be sufficient to distinguish each inspector's district.

Copies of the models of gasholder to be provided by order of general or quarter sessions in England, and by meetings of justices in Scotland.

Appointment of inspectors.

4. In England, at some general or quarter sessions of the peace within nine months next after the passing of this Act, the justices of the peace of every county, riding, or division, or county of a city or county of a town, in general or quarter sessions assembled, and in such boroughs as may adopt this Act, as hereinafter provided, the town council at the meeting next after such adoption, and in Scotland the justices of the peace at a meeting to be called for the purpose by the sheriff of each county, and the magistrates of each royal burgh, within nine months after the passing of this Act, and so from time to time at any subsequent general or quarter sessions or meeting so called, shall determine the number or copies of the said models of gasholders, with proper balances, indices, and apparatus as aforesaid, which they shall deem requisite for the testing of meters within their respective jurisdictions, and shall direct that such copies, verified and stamped at the Exchequer, together with such number of stamps for stamping meters as they shall deem requisite, shall be provided for the use of the same, and shall fix the places at which such copies and stamps shall be deposited, and shall appoint a sufficient number of inspectors of meters for the safe custody of such copies and stamps, and for the discharge of the other duties hereinafter mentioned, and shall allot to each inspector a separate district, and from time to time, when necessary, shall subdivide and re-allot such districts; and all such districts shall be distinguished by the number or mark applied thereto on such stamps, and they shall direct what reasonable remuneration shall be paid to such inspectors for the discharge of such duties as they shall have been ordered by such justices or town council or magistrates as aforesaid to perform, and they are hereby empowered to suspend or dismiss any inspectors so appointed, or to appoint additional inspectors as occasion may require: Provided always, that nothing herein contained shall extend to compel any town council in England or royal burgh of Scotland, except such as are county towns wherein gas is used, to provide copies of the said models and stamps, or to appoint an inspector or inspectors for the performance of the duties prescribed by this Act; and that it shall be lawful for the justices of the peace in any county, and for the magistrates of any royal burgh within such county, where they shall agree, to unite the whole or a portion of the county with such royal burgh, and to appoint one inspector therefor, and to provide at their joint expense copies of the said models and stamps to be used within such united districts: Provided always, that in every borough in England where there is a town council, not being a manufacturer or seller of gas, it shall be lawful for such town council, within six months after the passing of this Act, after one month's notice duly given in the manner in which notices are usually published by such town council, to adopt this Act, if the majority of the members present at any council meeting at which the subject is appointed to be considered shall so determine; and if no resolution to that effect shall be passed within such time, then the justices aforesaid, at their next practicable general

or quarter sessions after the expiration of such six months, shall in reference to any borough not so adopting this Act, carry this Act into effect; and in all boroughs as aforesaid in which the town council is a manufacturer or seller of gas, the justices of such boroughs shall have such and the like powers of adopting and carrying into effect the provisions of this Act within such boroughs as by this Act are given to town councils not being manufacturers or sellers of gas:

4. *Regulation of Gas Meters.*

5. In Ireland, the town council or town commissioners of every borough and town, such town council and commissioners not being manufacturers or sellers of gas, shall, at a meeting of the town council or commissioners to be held within nine months after the passing of this Act, and so from time to time at any subsequent meeting, determine the number of copies of the said models of gasholders, with proper balances, indices, and apparatus as aforesaid, which they shall deem requisite for the testing of meters within their towns or boroughs respectively, and shall direct that such copies, verified and stamped at the exchequer, together with such number of stamps for stamping meters as they shall deem requisite, shall be provided for the use of the same, and shall fix the places at which such copies and stamps shall be deposited, and shall appoint a sufficient number of inspectors of meters for the safe custody of such copies and stamps, and for the discharge of the other duties hereinafter mentioned, and shall allot to each inspector a separate district, and from time to time, when necessary, shall subdivide and re-allot such districts, and shall direct what reasonable remuneration shall be paid to such inspectors, and they are hereby empowered to suspend or dismiss any inspector so appointed, or to appoint additional inspectors from time to time as occasion may require; and in all boroughs and towns in which the town council or town commissioners shall be manufacturers or sellers of gas, the justices of such boroughs and the grand jury of the county in which such boroughs or towns not having a separate commission of the peace shall be situate respectively shall have such and the like powers as by this Act are given to the town council and town commissioners not being manufacturers or sellers of gas for carrying into effect the provisions of this Act within such boroughs and towns: Provided always that the jurisdictions of such town council and town commissioners, justices, and grand juries respectively shall extend to all meters out of such boroughs or towns for measuring gas manufactured at any gas works by which any such borough or town shall be supplied with gas.

Models and copies of gasholders to be provided by town councils, town commissioners, etc., and inspectors appointed.

6. The copies of the said models so directed by the said justices, magistrates, or town council to be verified and stamped at the Exchequer shall be compared with the models deposited with the Comptroller-General of the Exchequer as aforesaid, and if correct shall be verified and stamped by the Comptroller-General, or some other officer of the Exchequer at Westminster, duly authorized, upon payment of such fees (a) as are at present payable upon verification and stamping a set of measures under the Acts relating to weights and measures, and no stamp duty shall be payable thereon.

Officers of the exchequer at Westminster to stamp copies of models.

7. The expense of providing and transmitting such copies of models of gasholders, with proper balances, indices, and apparatus as aforesaid, and of the stamp to be used by the inspectors, and the remuneration to the inspectors, shall be paid in England out of the stock raised in such counties, ridings, divisions, counties of cities or counties of towns, and in boroughs out of any funds applicable to lighting purposes, and if no such funds, then out of the borough fund; and in Scotland such expenses in the respective shires and stewartries, and cities or royal burghs, shall be assessed by the commissioners of supply upon such shires and stewar-

Expense of providing copies of models and remuneration of inspectors defrayed out of county rates, etc.

(a) By the 29 & 30 Vict. c. 82, fees is repealed.  
so much of this section as relates to

#### 4. *Regulation of Gas Meters.*

ries, and upon cities or royal burghs by the magistrates thereof, according to the real rent of lands and heritages as appearing on the valuation roll of such shires, stewartries, and burghs respectively, and in such manner and by such persons as the said commissioners of supply and magistrates respectively may determine and appoint, and such assessments shall be collected under the same powers of levying and recovery as are competent for levying and recovering the land tax: Provided always, that in the city of London the expenses and remuneration aforesaid shall be paid out of the consolidated rate raised by the commissioners of sewers of the city of London, and in Ireland such expenses in the respective boroughs and towns shall be provided for and paid respectively out of any funds applicable to lighting purposes, and if no such fund, then out of any other borough or town fund.

No maker or seller of meters, or person in the service of any gas company or manufacturer of meters or gas, to be an inspector.

Inspector to enter into recognizances.

8. No maker, repairer, or seller of meters or of gas, or person employed in the making, repairing, or selling of meters or gas, shall be an inspector of meters under the provisions of this Act; and every inspector shall forthwith enter into a bond of recognizance to the Queen, to be sued for in any courts of record, in such sum, and either with or without a surety or sureties, as the justices, magistrates, town council, or other persons by whom he may have been appointed shall fix, for the due and punctual performance of the duties of his office, and for the due and punctual payment at such time or times as he may be directed by the justices, magistrates, town council, or other persons by whom he may have been appointed, of all fees received by him under the authority of this Act, and for the safety of the said copies of models and stamps committed to his charge, and for their due restoration and surrender to such person or persons as may be appointed to receive them by the justices, magistrates, town council, or other persons aforesaid immediately on his removal or other cessation from office.

Inspectors to attend at towns where gas is consumed, when required by justices.

9. In England the justices in general or quarter sessions assembled or the town council in boroughs adopting this Act at any meeting thereof, and in Scotland the justices or magistrates at a meeting called for the purpose, and in Ireland the town council or town commissioners of any such borough or town as aforesaid, shall determine and appoint on what days, at what hours, and what places each and every inspector shall attend with the said copies of models and stamps in his custody at each of the several towns and districts within their respective jurisdictions as they shall deem expedient; and every such inspector so attending shall examine, test, and, if found correct, stamp all such meters as shall be required under the provisions of this Act to be so examined, tested, and stamped, and shall deface or destroy the stamp on any meter tested and found incorrect under the provisions of this Act, and he shall keep a book wherein he shall enter minutes of all such examinations and testings, with the numbers of identity and capacity marked by the manufacturer on such meters, and give, if required, a certificate under his hand of every such stamping and defacing; and every inspector shall once in every quarter of a year account to the treasurer of the county, riding, division, county of a city or county of a town, or borough or town, or to such other person as shall be duly authorized by those by whom he may have been appointed, for all fees received by him under this Act, and shall pay the amount thereof to such treasurer as aforesaid, who shall account for the same.

Inspector to pay fees to treasurer of county, etc.

Meters when stamped need not be restamped.

10. No meter duly stamped under the authority of this Act shall be liable to be re-stamped, although the same be used in any other place than that at which the same was originally stamped, but shall be considered as a legal meter throughout the United Kingdom, unless found to be incorrect within the meaning of this Act.

Penalty on inspector for misconduct.

11. In case any inspector of meters shall stamp any meter without duly testing and finding the same to be correct, or shall refuse, or for

three days after being so required under the provisions of this Act neglect, without lawful excuse, to test any meter, or to stamp any meter found to be correct on being so tested, or shall be guilty of a breach of any duty imposed upon him by this Act, or shall otherwise misconduct himself in the execution of his office, every such offender shall upon conviction forfeit a sum not exceeding five pounds for every such offence.

12. No meter shall be stamped which shall be found by the inspector to register, or be capable of being made by any contrivance for that purpose, or by increase or by decrease of the water in such meter, or by any other means practically prevented in good meters, to register, quantities varying from the true standard measure of gas more than two per centum in favour of the seller, or three per centum in favour of the consumer; and every meter, whether stamped or unstamped, which shall be found by such inspector to register, or be so capable of being made to register, quantities varying beyond the limits aforesaid, shall be deemed incorrect within the meaning of this Act; and every meter which shall be found by such inspector to measure and register quantities accurately, or not varying beyond the limits aforesaid, and shall be found incapable by any such means as aforesaid of being made to register quantities varying beyond the limits aforesaid, shall be considered to be correct, and be stamped as aforesaid in such manner and on such part of the meter as shall be specially directed by the authority appointing him, or, in default of such direction, as shall in his opinion best prevent fraud: Provided always, that every meter having a measuring capacity at one revolution or complete action of the meter of not less than five cubic feet, and having permanently marked upon it in some conspicuous place the words "without float," shall be stamped by the inspectors if found correct, within the meaning of this Act, in all other respects except that it is capable of being made by abstraction of water to register incorrectly against the seller of gas; but it shall not be lawful after the time aforesaid to use in the sale of gas any such meter, when so stamped by the inspector, except by written agreement between the buyer and seller specifying that this description of meter shall be used.

13. The following rules shall be observed by the inspector in testing meters under the provisions of this Act:—

Firstly, the meter shall be tested for soundness or leakage only, and not for percentage of error, when fixed on a horizontal base, and with gas under a pressure equal to a column of water three inches high, with a light or lights consuming not more than one twentieth part of its measuring capacity per hour marked thereon, nor less than one half of a cubic foot per hour for all meters of a measuring capacity not exceeding one hundred cubic feet per hour, and not more than one fortieth part of its said measuring capacity per hour for all meters of any greater measuring capacity per hour than one hundred cubic feet; and all meters found to work under such test shall be deemed sound meters, and any meter found not to work under such test shall not be stamped.

The meter to be tested for percentage of error shall be fixed on a horizontal base, and shall be tested at a pressure equal to a column of water five-tenths of an inch high, and passing the quantity of gas or atmospheric air per hour which shall be marked thereon as its measuring capacity per hour, and the water used in such testing, and the air of the room in which such testing shall be made, shall be as nearly as practicable of the same temperature as the gas or air passed through the meter.

14. If any person or persons shall make, except under the authority of this Act, or forge or counterfeit, or cause or procure to be made, except as aforesaid, or forged or counterfeited, or knowingly act or assist in the

#### 4. Regulation of Gas Meters.

Meters not to be stamped if more than two per cent. incorrect in favour of the seller, or three per cent. in favour of the consumer, and to be stamped if erroneous to no greater extent.

Certain meters incorrect against the seller of gas may be used by agreement.

Rules for testing meters.

Penalty for counterfeiting stamps.



4. *Regulation of Gas Meters.*

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Penalty for tampering with meter or obstructing inspector.

Consumers may use any stamped meter.

After ten years all meters to be stamped.

Penalty for using unstamped meter.

After twelve months no meter to be sold, etc., unless stamped; and unstamped meters may be stamped if required, or stamped meters substituted, at the expense of the person requiring it.

making, except as aforesaid, or forging or counterfeiting, any stamp or mark which may be hereafter used for the stamping or marking of any meter under this Act, every person so offending shall for every such offence forfeit on conviction a sum not exceeding fifty pounds or less than ten pounds; and if any person shall knowingly sell, utter, or dispose of, let, lend, or expose to sale any meter with such forged stamp or mark thereon, every person so offending shall for every such offence forfeit on conviction a sum not exceeding ten pounds or less than forty shillings, and all meters with such forged or counterfeited stamps shall be forfeited and destroyed.

15. Any person who shall knowingly repair or alter, or knowingly cause to be repaired or altered, or knowingly tamper with, or do any other act in relation to any stamped meter so as to cause such meter to register unjustly or fraudulently, or who shall prevent or refuse to allow lawful access to any meter in his possession or control, or the supply of water thereto as hereinafter provided, or shall obstruct or hinder any examination or testing authorized by this Act of any such meter, shall on conviction forfeit a sum not exceeding five pounds, pay the fees for removing and testing, and the expense of purchasing and fixing a new meter; provided that the payment of any such penalty as aforesaid shall not exempt the person paying from liability to indictment or other proceeding at law to which he would otherwise be liable, or deprive any person of the right to recover damages against such person for any loss or injury sustained by such act or default.

16. Every consumer of gas may purchase and use for the measurement of the gas supplied to him any meter duly stamped under the authority of this Act, provided that the gas to be consumed per hour shall not exceed the quantity per hour the meter is intended to measure, so marked on the outside thereof as aforesaid.

17. After the expiration of ten years from the passing of this Act, all meters whatsoever not previously stamped which shall be used for buying and selling gas, or for the collecting of any rates or duties, or for making any charges on the passage, transmission, or conveyance of gas, shall be examined and tested under the authority of this Act, and stamped if found correct; and every person who shall after the times respectively fixed by this Act knowingly use any meter which has not been so stamped as aforesaid, shall on conviction forfeit a sum not exceeding five pounds, and any contract, bargain, or sale made by any such meter shall be void; and every such meter so used shall, on being discovered by any inspector so appointed as aforesaid, be seized, and, on conviction of the person knowingly using or possessing the same, shall be forfeited and destroyed.

18. No meter for the purpose of ascertaining the quantity of gas sold shall be fixed for use after the expiration of twelve months after the passing of this Act, unless the same shall have its measuring capacity at one revolution or complete action of the meter, and also the quantity per hour it is intended to measure in cubic feet, or multiples or decimal parts of a cubic foot, denominated or marked on the outside thereof in legible letters or figures, and shall be stamped by an inspector of meters under the provisions of this Act; and every person who, after the expiration of such twelve months, shall fix for use any such meter before it has been so stamped, shall be liable to a penalty of five pounds for every such unstamped meter; and all meters required to be tested and stamped, except as hereinafter mentioned, shall be delivered to the inspector at the place where his testing gasholder and apparatus may be kept; and every purchaser and seller of gas by meter may, at his own expense, at any time after the expiration of the said twelve months, require any unstamped meter by which his gas is measured to be examined, tested, and, if found correct, stamped, or he may at his own expense substitute a stamped

meter in the place of any such unstamped meter: Provided always, that such purchaser or seller of gas shall, before removal of any such unstamped meter for the purposes aforesaid, give twenty-four hours' notice in writing of such intended removal to the other party to the contract.

4. *Regulation of Gas Meters.*

19. The fees for examination, comparison, and testing, with or without stamping, meters, shall be sixpence for every meter delivering a cubic foot of gas in four or more revolutions or complete repetitions of the action of the meter, and one shilling for each meter delivering a cubic foot of gas by any less number of revolutions or complete actions, or one revolution or complete action, and for each meter delivering more than one cubic foot of gas by one revolution or complete action, the further sum of one shilling for every cubic foot of gas delivered at one revolution or complete action beyond the first cubic foot.

Fees for testing and stamping meters.

20. In England and in such boroughs and towns as aforesaid in Ireland it shall be lawful for any inspector authorized in writing under the hand of any justice of the peace in England or Ireland, or of any sheriff, justice, or magistrate in Scotland, at the request and expense of any buyer or seller of gas, who shall have given twenty-four hours' notice in writing to the other party to the contract, at all seasonable times to enter any house or shop, store, warehouse, still, yard, or place whatsoever within his jurisdiction where any meter, whether stamped or unstamped, shall be fixed or used, and to examine and test the same, and if necessary for such purpose to remove such meter, doing as little damage thereby as may be; and if upon such examination and testing it shall appear that any such meter is incorrect within the meaning of this Act, or fraudulent, the same shall not be refixed or used again unless and until altered and repaired so as to measure and register correctly, and stamped; and the fees on such removal, examination, and testing of a meter, whether stamped and replaced or not, shall be double the fees hereinbefore made payable for testing and stamping, and shall be payable by the buyer or seller of gas as the justice of the peace in England or Ireland, or the sheriff, justice, or magistrate in Scotland as the case may be, shall determine, and shall be recoverable accordingly: Provided always, that in case the head office of the person or company to whom such notice is to be given shall be more than twenty miles distant from the meter referred to in such notice, three days' notice in writing shall be given instead of twenty-four hours' notice as aforesaid; and provided also, that any person duly authorized by any company or persons selling gas by meter may supply water to any meter, so as to keep the water at the correct level.

Power to justices and inspectors to enter houses, etc., and inspect gas measures and meters.

21. In case of any dispute between the buyer and seller of gas by meter, or between any owner of a meter and any inspector of meters under this Act, respecting the correctness of any meter, the inspector shall, if required by any such person dissatisfied with his decision, give such party his reasons in writing for such decision, and such party may require such meter to be examined and re-tested by two inspectors of adjoining or neighbouring districts, to be named by any justice of the peace having jurisdiction in the district where such meter shall have been tested; and the unanimous decision of such last-mentioned inspectors shall be final as to the correctness or incorrectness of such meter, except in case of appeal to the general or quarter sessions; and in case such two inspectors shall not agree, the decision of the inspector of the district to which such meter belongs shall be considered final, except in case of appeal to the general quarter sessions, as hereinafter provided; and the expenses of the proceedings to be taken under the powers hereby granted shall be ascertained by the justice, who shall also determine by and to whom the same shall be paid, and such expenses may be recovered in any court of competent jurisdiction.

Disputed decision of inspector to be referred to two inspectors of adjoining districts, etc.

22. In England and in such boroughs and towns as aforesaid in Ire-

#### 4. Regulation of Gas Meters.

Persons aggrieved may appeal to quarter sessions.

land all persons who may think themselves aggrieved by any act or decision of any inspector or inspectors of meters, or by any order, judgment, or determination of any justice of the peace, mayor, or chief magistrate, relating to any matter or thing in this Act mentioned or contained, may appeal to the justices of the peace, recorder, or other presiding officer at the then next practicable general or quarter sessions to be held for the city, borough, or county within which the alleged cause of appeal shall arise, first giving seven days' notice in writing of such intention to appeal, and the grounds and nature thereof, to the party against whom such complaint is intended to be made, and forthwith after such notice entering into a recognizance before some justice of the peace, mayor, or other chief magistrate, with two sufficient sureties, conditioned to try such appeal and abide the order and award of the said court thereon; and the said justices, recorder, or other presiding officer shall either hear and determine the said complaints at such general or quarter sessions, or, if they think proper, shall adjourn the hearing thereof till the following general or quarter sessions of the peace to be held for such city, borough, or county; and the said justices, recorder, or other presiding officer may, if they or he see cause, reverse or alter such decision, and mitigate any penalty or forfeiture, and may order any money to be returned which may have been levied in pursuance of such order or determination, and may also order any such further satisfaction to be made to the party injured as they or he shall judge reasonable, and may also order such costs to be paid by the party complained against to the party appealing, or *vice versa*, as they shall think reasonable.

This Act and existing powers not to be cumulative.

23. Where any municipal corporation, local board of health, or two or more justices, or any other corporation or person now have powers of appointing inspectors of meters, and they or such inspectors now have powers of stamping, restamping, examining, or testing meters, those powers and the provisions of this Act shall not be cumulative, but after the expiration of nine months after the passing of this Act the provisions of this Act shall supersede all such powers.

Proceedings not to be quashed for want of form or removed.

24. No proceeding to be had or taken in pursuance of this Act shall be quashed or vacated for want of form, or be removed by certiorari, or by any other writ or proceeding whatsoever, into any of her Majesty's courts of record at Westminster or elsewhere, any law or statute to the contrary notwithstanding.

As to recovery and application of penalties.

25. In England and in such boroughs and towns as aforesaid in Ireland all fees and penalties received and recovered under this Act shall be applied in aid of the stock or fund out of which the expenses of carrying the Act into effect shall be defrayed, and in Scotland all penalties incurred under the provisions of this Act shall be recoverable, with expenses, either before the sheriff of the county, or the magistrates of the burgh or town corporate wherein the same may be incurred or where the offender may reside, or before two or more justices of the peace of such county, at the instance either of the procurator fiscal of Court or any person who may prosecute for the same; and the whole penalties, after deducting all charges, and such remuneration to the person prosecuting as the said justices shall think fit, shall be applied in aid of the funds liable under the provisions of this Act to the cost of providing and maintaining copies of the said models in the place where such penalties shall be awarded; and it is hereby provided that it shall be competent for the said courts respectively to proceed in a summary way and to grant warrant for bringing the parties complained of before them, and upon proof on oath by one or more credible witnesses, or on the confession of the offender, or on other legal evidence, forthwith to give judgment on such complaint without any written pleadings or record of evidence, and to grant warrant for the recovery of such penalties and expenses de-

cerned for, failing payment within fourteen days after conviction, by poinding, or by imprisonment for a period, at the discretion of the Court, not exceeding sixty days, it being hereby provided that a record should be preserved of the charge and of the judgment pronounced.

*4. Regulation of Gas Meters.*

26. In Scotland if any person or persons shall feel themselves aggrieved by the sentence of any sheriff or magistrates of burghs or towns corporate, or justices of the peace, pronounced in any case arising under this Act, it shall be lawful for such person or persons to appeal to the court of judicary at the next circuit court, or where there is no circuit court to the high court of judicary at Edinburgh, in the manner and under the rules, limitations, and conditions contained in an Act passed in the twentieth year of the reign of his Majesty King George the Second, intituled "An Act for taking away and abolishing Heritable Jurisdictions in Scotland," with this variation only, that such person or persons so appealing shall, in place of finding caution in the terms prescribed by the said Act, be bound to find caution to pay the penalty or penalties and expenses awarded against him or them by the sentence or sentences appealed from in the event of the appeal or appeals being dismissed, together with any additional expenses which shall be awarded by the Court in dismissing the said appeal; and it shall not be competent to appeal from or to bring the judgment of any sheriff or justices of the peace acting under this Act under review by advocacy, suspension, or reduction, or any other way than as herein provided.

*Appeal in Scotland to the commissioners of judicary at circuit court.*

27. In all actions brought against any person for anything done in pursuance of this Act, or in the execution of the powers or authorities thereof, such action shall be laid and brought in the county within which the cause of action shall have arisen, and the defendant or defendants in such action may plead the general issue, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the Acts were done in pursuance or by the authority of this Act; and if they shall appear to have been so done, or that such action shall have been brought otherwise than as hereinbefore directed, then and in every such case the jury shall find for the defendant or defendants; upon which verdict, or if the plaintiff or plaintiffs shall become nonsuited, or shall suffer a discontinuance of his, her, or their action after the defendant or defendants shall have appeared thereto, or if a verdict shall pass against the plaintiff or plaintiffs therein, or if upon demurrer or otherwise judgment shall be given against the plaintiff or plaintiffs, the defendant or defendants shall have his, her, or their costs, and shall have such remedy for recovering the same as defendants have for recovering costs of suit by law in any other cases.

*Limitation of actions, etc.*

28. No plaintiff shall recover in any action for any irregularity, trespass, or other wrongful proceeding made or committed in the execution of this Act if tender of sufficient amends shall have been made by or on behalf of the party or parties who shall commit such irregularity, trespass, or other wrongful proceeding before such action brought; and in case no tender shall have been made, it shall be lawful for the defendant or defendants in any such action, by leave of the Court wherein such action shall depend, at any time before issue joined, to pay into Court such sum or sums of money as he, she, or they shall think fit, whereupon proceedings, order, and adjudication shall be had and made in and by such Court as in other actions where defendants are allowed to pay money into Court.

*Plaintiff not to recover after tender of amends.*

## 5. Forms.

## V. Forms.

(1.) Warrant for keeping of watch.

\_\_\_\_\_ } To the constable of the hundred of \_\_\_\_\_, in the said county.

At a general quarter sessions of the peace holden at \_\_\_\_\_, in and for the said county, before us, \_\_\_\_\_, esquires, justices of our lady the Queen, assigned to keep the peace within the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours in the said county committed, you are hereby required forthwith to issue your warrant to the several petty constables within your said hundred, that they do cause watch to be kept by night, and ward by day, with able men, within and throughout their respective constablewicks, from the \_\_\_\_\_ day of \_\_\_\_\_ now next ensuing, unto the \_\_\_\_\_ day of \_\_\_\_\_ then next following; and that they do apprehend, or cause to be apprehended, all rogues, vagabonds, and other wandering, idle, and disorderly persons, and carry them before some of her Majesty's justices of the peace in and for the said county, to be examined and further dealt withal according to law. Given under our hands and seals the day and year first above written.

(2.) Commitment of a person apprehended by the watch.

\_\_\_\_\_ } To the constable of \_\_\_\_\_, and to the keeper of the house of correction at \_\_\_\_\_.

Whereas A. O. was yesterday in the night taken by the watch set by the constable of \_\_\_\_\_, wandering abroad, and lodging in barns, outhouses, or in the open air, and is this day brought before me, J. P., Esq., one of the justices of our lady the Queen, assigned to keep the peace within the said county, and doth not now give a good account of himself before me. These are to require you, the said constable of \_\_\_\_\_, to convey the said A. O. to the said house of correction at \_\_\_\_\_ aforesaid, and to deliver him to the keeper thereof, together with this warrant. And I do hereby require you, the said keeper of the house of correction aforesaid, to receive the said A. O. into your custody in the said house of correction, and him there safely to keep to hard labour for \_\_\_\_\_ (a); and have you him then there, together with this precept. Given under my hand and seal at \_\_\_\_\_, in the said county, the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of \_\_\_\_\_.

(3.) Indictment for not watching.

\_\_\_\_\_ (venue).—The jurors for our lady the Queen upon their oath present, that A. O., of \_\_\_\_\_, in the said county, yeoman, on the \_\_\_\_\_ day of \_\_\_\_\_, in the \_\_\_\_\_ year of the reign of \_\_\_\_\_, and long before and always after, unto the day of the taking this inquisition, was and yet is an inhabitant of the town of \_\_\_\_\_ aforesaid, in the county aforesaid; and that the said A. O. then and there, to wit, on the said \_\_\_\_\_ day of \_\_\_\_\_, in the year aforesaid, at \_\_\_\_\_ aforesaid, in the county aforesaid, was duly summoned in his turn to watch with the constable, of \_\_\_\_\_ aforesaid, in the night of the same day; nevertheless, the said A. O., his duty in that behalf not regarding, did not watch in the said night of the same day in the year aforesaid, nor in any part of the said night, with the said constable, at \_\_\_\_\_ aforesaid, in the county aforesaid, but did then and there utterly refuse so to do, and wilfully and obstinately therein did make default; in contempt of our said lady the Queen, and of her laws, and against the peace of our said lady the Queen, her crown and dignity.

(4.) Application by ratepayers to churchwardens, pursuant to 3 &amp; 4 Will. 4, c. 80, s. 5, ante, 364 (b).

Gentlemen,—We, the undersigned, A. B., C. D., and E. F., being respectively ratepayers of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, do hereby request that you will appoint and notify, pursuant to the 3 & 4 Will. 4, c. 90,

(a) By the 5 Geo. 4, c. 83, s. 4, this must not be more than three calendar months, tit. "Vagrants,"

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(b) See the forms in Mr. Tidd Pratt's work on this Act.

s. 5, a time and place for a public meeting of the ratepayers of the said parish, for the purpose of determining whether the provisions contained in a certain Act, passed in the fourth year of the reign of his late Majesty King William the Fourth, intituled "An Act to repeal an Act of the Eleventh Year of his late Majesty King George the Fourth, for the Lighting and Watching of Parishes in England and Wales, and to make other Provisions in lieu thereof," [or "so much thereof as relates to"] shall be adopted and carried into execution in the said parish. Dated the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

5. Forms.

To Messrs. G. H. and I. K.  
Churchwardens of the parish of \_\_\_\_\_,  
in the county of \_\_\_\_\_.

A. B. of \_\_\_\_\_  
C. D. of \_\_\_\_\_  
E. F. of \_\_\_\_\_

We, G. H. and I. K., churchwardens of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, having received an application in writing from A. B., C. D., and E. F., ratepayers of the said parish, requesting that we will appoint and notify, etc. [recite the form of application], do hereby give notice that we appoint a public meeting of the ratepayers of the said parish, to be held at \_\_\_\_\_, on \_\_\_\_\_, the \_\_\_\_\_ day of \_\_\_\_\_, at \_\_\_\_\_ o'clock of the forenoon, for the purpose of determining whether the provisions in the said Act contained [or "so much thereof as relate to"], shall be adopted and carried into execution in the said parish. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(5.) Notification of time and place of meeting of ratepayers, pursuant to such application.

G. H.  
I. K.

N.B.—By the 3 & 4 Will. 4, c. 90, s. 14, *ante*, 367, "No person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing, as such, under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting, or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting."

For [or against] adopting the provisions of Act, as far as respects Watching or Lighting.	Signatures of Voters.	Description and Designation of Voters.	Residence of Voters.

(6.) Book or paper to be used at the meeting for determining whether the 3 & 4 Will. 4, c. 90, shall come into operation (a).

Names and Residence of Inspectors Voted for.	Signatures of Electors.	Description and Designation of Electors.	Residence of Electors.

(7.) Book or paper to be used in the election of inspectors (a).

At a meeting [or "adjourned meeting"] of the ratepayers of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, held at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_, it was determined by a majority consisting of two-thirds

(8.) Minute of adoption of provisions of Act.

(a) See these forms in Mr. Tidd c. 90, p. 83.  
Pratt's work on the 3 & 4 Will. 4,

## 5. Forms.

*of the votes of the ratepayers present at such meeting, that the provisions of the 3 & 4 Will. 4, c. 90, intituled, etc. [set out the title of the Act or so much thereof as relates to watching or lighting], should be adopted; and that inspectors should be elected to carry such purposes into effect.*

*A. B. Chairman.*

*C. D. }  
E. F. } Ratepayers.  
G. H. }*

(9.) Minute,  
stating the  
amount of money  
to be raised.

*At a meeting [or "adjourned meeting"] of the ratepayers of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, held at \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_, it was resolved and determined that the total amount of money which the inspectors shall have power to call for in the succeeding year, in order to carry into effect the provisions of a certain Act, passed in the fourth year of the reign of his late Majesty King William the Fourth, intituled "An Act," etc. [set out the title of the Act], shall be the sum of £ \_\_\_\_\_.*

*A. B. Chairman.*

*C. D. }  
E. F. } Ratepayers.  
G. H. }*

(10.) Demand of  
poll.

*We, A. B., C. D., E. F., G. H., and I. K., five rated inhabitants of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, qualified to vote, pursuant to the provisions of a certain Act, passed in the fourth year of the reign of his late Majesty King William the Fourth, intituled, etc. [set out the title of Act], do hereby demand a poll to be taken of the ratepayers qualified to vote upon the question as to whether the said Act, and the provisions thereof [or "so much thereof as relates to \_\_\_\_\_"], shall be adopted in such parish, and also as to the amount of money to be raised in the succeeding year for the purposes thereof, and the number of inspectors to be elected; as determined at the present meeting. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_\_.*

*A. B. }  
C. D. } I. K.  
E. F. }*

*To Mr. I. M., chairman of the meeting of ratepayers, held in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_, A.D. \_\_\_\_\_, pursuant to 3 & 4 Will. 4, c. 90.*

(11.) Notice of  
adoption of Act.

*Notice is hereby given, that at a meeting of the ratepayers of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, held on the \_\_\_\_\_ day of \_\_\_\_\_ last, at \_\_\_\_\_, pursuant to the provisions of the 3 & 4 Will. 4, c. 90, intituled, etc. [set out title of Act], it was resolved by a majority of two-thirds of the votes of the ratepayers present at such meeting [or, in case of a poll being demanded, "by a majority of two-thirds of the votes of the ratepayers, delivered to us the said churchwardens, on a poll having been demanded, the whole number of persons voting being a clear majority of the ratepayers of the parish"], that the provisions of the said Act [or "so much of the said Act as relates to watching or lighting"], should be adopted in the said parish; and the amount of the money to be raised in the succeeding year was fixed at the sum of £ \_\_\_\_\_, and the number of inspectors to be elected was fixed and determined to be \_\_\_\_\_, and that \_\_\_\_\_ were at the said meeting appointed such inspectors. Dated this \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_\_*

*A. B. } Churchwardens of the  
C. D. } parish of \_\_\_\_\_.*

Notice is hereby given, that a meeting of the ratepayers of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, will be held at \_\_\_\_\_, on \_\_\_\_\_, at \_\_\_\_\_ o'clock in the forenoon, for the purpose of electing \_\_\_\_\_ inspectors, pursuant to the provisions of the 3 & 4 Will. 4, c. 90, intituled, etc. [set out title of Act]. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

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(12.) Notice for election of inspectors.

A. B. } Churchwardens of the  
C. D. } parish of \_\_\_\_\_.

N.B.—By the 3 & 4 Will. 4, c. 90, s. 17, *ante*, 368, each candidate must be a person who resides within the parish, and who has been assessed or charged by the last rate made for the relief of the poor, in respect of a dwelling-house, etc., of the annual value, according to the said rate, of £15, or more.

I do hereby certify to the overseers of the poor of the parish of \_\_\_\_\_, that at a meeting of the ratepayers of the said parish, held at \_\_\_\_\_, and pursuant to the provisions of the stat. 3 & 4 Will. 4, c. 90, intituled, etc. [here set out title of Act], A. B., etc., were duly elected inspectors for the purposes of the said Act. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(13.) Certificate of chairman to overseers of the election of inspectors.

C. D. Chairman.

I. K. }  
L. M. } Ratepayers.

We, J. J. and J. K., the inspectors appointed in the parish of \_\_\_\_\_, for the purposes of the Act 3 & 4 Will. 4, c. 90, intituled, etc. [set out title of Act], do hereby give you notice that we are ready to produce our accounts and vouchers for the year ending the \_\_\_\_\_ day of \_\_\_\_\_ last. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(14.) Notice by inspectors of being ready to produce accounts pursuant to 3 & 4 Will. 4, c. 90, s. 18, *ante*, 369

J. J.  
J. K., etc.

To C. D. and E. F.,  
Churchwardens of the parish of \_\_\_\_\_.

We, G. H. and J. K., churchwardens of the parish of \_\_\_\_\_, etc. [as in form (5)], for the purpose of the inspectors appointed under the said Act producing their accounts and vouchers for the year ending on the \_\_\_\_\_ day of \_\_\_\_\_ last, and for the election of inspectors for the execution of the said Act, and for determining the amount of money to be raised for the purposes of the said Act for the current year. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.

(15.) Notice to be given by churchwardens on receipt of notice for inspectors.

G. H.  
J. K.

N.B.—By the 3 & 4 Will. 4, c. 90, s. 14, *ante*, 367, “No person shall be deemed a ratepayer, or be entitled to vote, or do any other act, matter, or thing as such, under the provisions of this Act, unless he or she shall have been rated to the relief of the poor for the whole year immediately preceding his so voting, or otherwise acting as such ratepayer, and shall have paid all the parochial rates, taxes, and assessments due from him or her at the time of so voting or acting, except such as have been made or become due within the six months immediately preceding such voting.”

We, J. J. and J. K., the acting inspectors in the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, under the provisions of the Act 3 & 4 Will. 4, c. 90, intituled, etc. [set out title of Act], do hereby give you notice that \_\_\_\_\_, one of the inspectors in the said parish of \_\_\_\_\_, is dead [or become disqualified, or has neglected to act], and require you forthwith, in the manner directed by the

(16.) Notice of vacancy in number of inspectors.



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said Act, to call a meeting of the rated inhabitants for the purpose of filling up such vacancy. Dated this                      day of                      , 18                      .

J. J.  
J. K.

To E. F. and G. H.,  
Churchwardens of the parish of                      , in the county of                      .

(17.) Notice to treasurer, etc., to deliver up books, etc.

We, J. J. and J. K., inspectors duly appointed in and for the parish of                      , in the county of                      , under the provisions of the Act 3 & 4 Will. 4, c. 90, intituled, etc. [set out title of Act], do hereby require you, the treasurer [etc., see ante], forthwith to deliver up to                      , of                      , all books, papers, and writings in your custody or power relating to the execution of the said Act, in the said parish of                      , or to give satisfaction to us the said inspectors, or to the said                      , respecting the same. Dated this                      day of                      , 18                      .

J. J.  
J. K.

To Mr. E. F., the treasurer appointed under the provisions of the Act of the 3 & 4 Will. 4, c. 90.

(18.) Order on overseers to collect money.

We, J. J. and J. K., the inspectors duly elected for the parish of                      , in the county of                      , under the provisions of the Act 3 & 4 Will. 4, c. 90, intituled, etc. [set out title of Act], do hereby require you, the overseers of the poor of the said parish, to collect and levy, pursuant to the said Act, the sum of £                      , being the amount we are authorized to call for in the year commencing on                      , and ending on                      , for the purposes of carrying into effect the provisions of the said Act, and to pay the same to                      , the treasurer duly appointed in the said parish, under the said Act, within three calendar months from the delivery of this our order. Dated this                      day of                      , 18                      .

J. J.  
J. K.

To E. F. and G. H.,  
Overseers of the poor of the parish of                      , in the county of                      .

(19.) Note to be given by overseers to treasurer, pursuant to 3 & 4 Will. 4, c. 90, s. 36 (ante, 374).

The sum of £                      was this day paid by the undernamed, the overseers of the parish of                      , in the county of                      , to                      , the treasurer duly appointed in the said parish, under a certain Act passed in the fourth year of the reign of King William the Fourth, intituled, etc. [set out title of Act], in pursuance of the order for levying the same, issued on the                      day of                      , 18                      , by the inspector duly appointed under the said Act. Dated this                      day of                      , 18                      .

E. F.  
G. H.

(20.) Receipt to be given by treasurer to overseers pursuant to that sect. (ante, 374).

Received the                      day of                      , 18                      , of                      and                      , the overseers of the parish of                      , the sum of £                      , levied by them in the said parish, pursuant to an order dated the                      day of                      , last made, and issued by                      and                      , the inspectors duly appointed in the said parish, under a certain Act passed in the fourth year of the reign of King William the Fourth, intituled, "An Act," etc. [set out title of Act].

E. F., the treasurer duly appointed in the parish of                      , by the inspectors, pursuant to the stat. 3 & 4 Will. 4, c. 90.

*To the inspectors of the parish of \_\_\_\_\_, in the county of \_\_\_\_\_, acting under the provisions of the stat. 3 & 4 Will. 4, c. 90 [or to J. P. and J. J. P., justices of the peace acting in and for the county of \_\_\_\_\_].*

*Local Government.*

(21.) Notice of appeal.

*This is to give notice to you and every of you, that I, A. B., of \_\_\_\_\_, do intend at the next general quarter sessions of the peace to be holden in and for the county of \_\_\_\_\_, at \_\_\_\_\_, in the said county, to appeal against a certain order, direction, or appointment of you the said inspectors [or against a certain order, or conviction, of you the said justices], dated the \_\_\_\_\_ day of \_\_\_\_\_ last; and that the grounds of such appeal are that [here set out the grounds of appeal], of all which premises you the said inspectors [or justices] are hereby desired to take notice. Dated this \_\_\_\_\_ day of \_\_\_\_\_, 18 \_\_\_\_.*

*(Signed)*

*A. B., of \_\_\_\_\_.*

## **Local Government.**

OF late years many Acts have been passed for the purpose of improving the sanitary condition of towns and populous places in England and Wales, and for placing under one and the same local management and control the supply of water to such places, and the sewerage, drainage, cleansing, and paving thereof. The chief of these Acts are "The Public Health Act, 1848" (11 & 12 Vict. c. 63), "The Public Health Supplemental Act, 1849" (12 & 13 Vict. c. 94), "The First Public Health Supplemental Act, 1852" (15 & 16 Vict. c. 42), "The Local Government Act, 1858" (21 & 22 Vict. c. 98), "The Local Government Act (1858) Amendment Act, 1861" (24 & 25 Vict. c. 61), and "The Local Government Act Amendment Act, 1863" (26 Vict. c. 17),—all of which Acts are, by sect. 8 of the last-named Act, declared to be one Act, and to be included under the expression "The Local Government Act, 1858," or any other words referring to that Act. In addition to these, there are "The Sewage Utilization Act, 1865" (28 & 29 Vict. c. 75), amended by "The Sanitary Act, 1866" (29 & 30 Vict. c. 90), "The Sewage Utilization Act, 1867" (30 & 31 Vict. c. 113), and "The Sanitary Act, 1868" (31 & 32 Vict. c. 115). And lastly, there is the 23 & 24 Vict. c. 30, enabling ratepayers to rate their district in support of public improvement for the benefit of the district. It will be convenient, therefore, to discuss the subject under the following heads:—

### **I. The Public Health Acts, p. 416.**

#### **1. Application of the Acts and Interpretation of Terms, p. 416.**

(11 & 12 Vict. c. 63, ss. 1, 2; 12 & 13 Vict. c. 94, s. 10; 15 & 16 Vict. c. 52, s. 14; 21 & 22 Vict. c. 98, ss. 2-9.)

#### **2. Adoption of the Act of 1848, p. 420.**

(11 & 12 Vict. c. 63, ss. 8-11.)

#### **3. Constitution of the Local Board under the Act of 1848, p. 424.**

(11 & 12 Vict. c. 63, ss. 12-19; 29 & 30 Vict. c. 90, s. 46.)

**Local Government.**

4. *Adoption of the Act of 1858*, p. 428.  
(21 & 22 Vict. c. 98, ss. 12-23; 24 & 25 Vict. c. 61, ss. 1, 2; 26 Vict. c. 17, ss. 2-5, 7.)
5. *Constitution of the Local Board under the Act of 1858*, p. 435.  
(21 & 22 Vict. c. 98, ss. 24-28; 29 & 30 Vict. c. 90, s. 46.)
6. *Election of the Local Board*, p. 437.  
(11 & 12 Vict. c. 63, ss. 20-33; 21 & 22 Vict. c. 98, s. 11.)
7. *Meetings, etc., of the Local Board*, p. 442.  
(11 & 12 Vict. c. 63, ss. 34-36.)
8. *Local Officers*, p. 443.  
(11 & 12 Vict. c. 63, ss. 37-40.)
9. *District Maps, etc.*, p. 445.  
(11 & 12 Vict. c. 63, ss. 41, 42.)
10. *Sewers*, p. 446.  
(11 & 12 Vict. c. 63, ss. 43-48; 21 & 22 Vict. c. 98, ss. 29-31; 24 & 25 Vict. c. 61, ss. 4-8; 29 & 30 Vict. c. 90, s. 49; 31 & 32 Vict. c. 115, s. 8.)
11. *House-drains, etc.*, p. 450.  
(11 & 12 Vict. c. 63, ss. 49-54; 31 & 32 Vict. c. 115, s. 7.)
12. *Surface-cleansing, etc.*, p. 454.  
(11 & 12 Vict. c. 63, ss. 55-60; 21 & 22 Vict. c. 98, ss. 32-34.)
13. *Slaughter-houses, etc.*, p. 458.  
(11 & 12 Vict. c. 63, ss. 61-65.)
14. *Common Lodging-houses*, p. 459.  
(11 & 12 Vict. c. 63, ss. 66, 67.)
15. *Management of Streets*, p. 461.  
(11 & 12 Vict. c. 63, ss. 68-73; 15 & 16 Vict. c. 42, s. 13; 21 & 22 Vict. c. 98, ss. 38-43; 24 & 25 Vict. c. 61, ss. 16, 17.)
16. *Regulation of Buildings*, p. 467.  
(21 & 22 Vict. c. 98, ss. 35, 36; 24 & 25 Vict. c. 61, s. 28.)
17. *Public Walks*, p. 468.  
(11 & 12 Vict. c. 63, s. 74.)
18. *Supply of Water*, p. 468.  
(11 & 12 Vict. c. 63, ss. 75-80; 21 & 22 Vict. c. 98, ss. 51-53; 24 & 25 Vict. c. 61, s. 20; 29 & 30 Vict. c. 90, s. 50.)
19. *Lighting*, p. 472.  
(12 & 13 Vict. c. 94, s. 8.)
20. *Reception-houses for the Dead*, p. 472.  
(11 & 12 Vict. c. 63, s. 81.)

21. *Burial-grounds, etc.*, p. 472.  
(11 & 12 Vict. c. 63, ss. 82, 83; 21 & 22 Vict. c. 98, s. 49;  
24 & 25 Vict. c. 61, s. 21; 29 & 30 Vict. c. 90, s. 44.)
22. *Purchase, etc., of Lands*, p. 474.  
(11 & 12 Vict. c. 63, s. 84; 21 & 22 Vict. c. 98, s. 75;  
24 & 25 Vict. c. 61, ss. 18, 22; 29 & 30 Vict. c. 90,  
s. 47.)
23. *Contracts*, p. 477.  
(11 & 12 Vict. c. 63, s. 85.)
24. *Rates*, p. 478.  
(11 & 12 Vict. c. 63, ss. 86–106; 21 & 22 Vict. c. 98,  
ss. 54–56; 24 & 25 Vict. c. 61, ss. 12, 13, 23.)
25. *Mortgage of Rates*, p. 488.  
(11 & 12 Vict. c. 63, ss. 107–114; 21 & 22 Vict. c. 98,  
s. 10, 57–59, 78; 24 & 25 Vict. c. 61, s. 19.)
26. *Bye-laws*, p. 492.  
(11 & 12 Vict. c. 63, ss. 115, 116; 24 & 25 Vict. c. 61,  
ss. 25.)
27. *Powers Transferred, Highways, etc.*, p. 493.  
(11 & 12 Vict. c. 63, ss. 117, 118; 21 & 22 Vict. c. 98,  
s. 37; 24 & 25 Vict. c. 61, ss. 9, 10, 26.)
28. *Powers Incorporated*, p. 496.  
(21 & 22 Vict. c. 98, ss. 44–48, 50; 24 & 25 Vict. c. 61, s.  
11; 29 & 30 Vict. c. 90, s. 43.)
29. *General Superintendence*, p. 498.  
(11 & 12 Vict. c. 63, ss. 119–121; 21 & 22 Vict. c. 98,  
ss. 8, 76; 24 & 25 Vict. c. 61, s. 14.)
30. *Audit of Accounts*, p. 500.  
(11 & 12 Vict. c. 63, s. 122; 21 & 22 Vict. c. 98, s. 60;  
24 & 25 Vict. c. 61, ss. 3, 15.)
31. *Arbitration*, p. 502.  
(11 & 12 Vict. c. 63, ss. 123–128; 21 & 22 Vict. c. 98,  
s. 64.)
32. *Legal Proceedings*, p. 505.  
(11 & 12 Vict. c. 63, ss. 129–140; 21 & 22 Vict. c. 98,  
ss. 61–67; 24 & 25 Vict. c. 61, s. 24.)
33. *Provisional Orders and Powers of Secretary of State*,  
p. 511.  
(21 & 22 Vict. c. 98, ss. 77–81; 24 & 25 Vict. c. 61,  
s. 27.)
34. *Miscellaneous*, p. 513.  
(11 & 12 Vict. c. 63, ss. 141–151; 21 & 22 Vict. c. 98,  
ss. 68–74, 82; 24 & 25 Vict. c. 61, s. 29.)

**II. *Sewage Utilization Acts*, p. 520 to 535.**

- (28 & 29 Vict. c. 75; 29 & 30 Vict. c. 90; 30 & 31 Vict.  
c. 113; 31 & 32 Vict. c. 115.)

1. *The Public Health Acts.*III. *Public Improvement Act*, p. 535.

(23 &amp; 24 Vict. c. 30.)

IV. *Forms*, p. 536.I. *The Public Health Acts.*

## 1. APPLICATION OF THE ACTS, AND INTERPRETATION OF TERMS.

Act may be applied to any part of England and Wales, except the City of London, and certain parts in the neighbourhood thereof.

5 Geo. 4, c. 100;  
6 Geo. 4, c. 38;  
9 Geo. 4, c. 64;  
2 Will. 4, c. 56.

Interpretation of terms.

Number.

Gender.

"Person" and words applying to persons.

"Lands."

"Premises."

"Owner."

"Rack-rent."

Full net annual value in calculating rackrent.

"Month."

"Commissioners of the Treasury."

By the 11 & 12 Vict. c. 63, s. 1, this Act may from time to time be applied, in manner hereinafter provided, to any part of England and Wales, except the parts next hereinafter mentioned (that is to say): the city of London and the liberties thereof, the parts within the limits of certain commissions of sewers bearing date at Westminster the 30th day of November, 1847; also the parts within the limits of a certain other commission of sewers bearing date at Westminster the 4th day of December, 1847; and the parts subject to the jurisdiction of the commissioners acting in the execution of an Act of the fifth year of the reign of King George the Fourth, for (amongst other things) more effectually paving, lighting, watching, cleansing, and regulating the Regent's Park, and in the execution of the several Acts for extending the jurisdiction of such commissioners.

Sect. 2. In the construction of this Act, the following words and expressions shall have the meanings hereby assigned to them, unless such meanings be repugnant to or inconsistent with the context or subject matter in which such words or expressions occur (that is to say):—

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number.

Words importing the masculine gender shall include females.

The word "person," and words applying to any person or individual, shall apply to and include corporations, whether aggregate or sole.

The word "lands" and the word "premises" shall include messuages, buildings, lands, and hereditaments of any tenure.

The word "owner" shall mean the person for the time being receiving the rackrent of the lands or premises in connection with which the word is used, whether on his own account or as agent or trustee for any other person, or who would so receive the same if such lands or premises were let at a rackrent.

The expression "rackrent" shall mean rent which is not less than two-thirds of the full net annual value of the property out of which the rent arises; and the full net annual value shall be taken to be the rent at which the property might reasonably be expected to let from year to year, free from all usual tenants' rates and taxes and tithe commutation rent-charge (if any), and deducting therefrom the probable average annual cost of the repairs, insurance, and other expenses (if any) necessary to maintain the same in a state to command such rent.

The word "month" shall mean calendar month.

The expression "commissioners of her Majesty's Treasury" shall mean the commissioners of her Majesty's Treasury of the United Kingdom of Great Britain and Ireland for the time being, or any three or more of them, or the Lord High Treasurer of the United Kingdom of Great Britain and Ireland for the time being.

- The expression "superior Courts" shall include her Majesty's superior Courts of Record at Westminster, and the Court of Common Pleas of the county palatine of Lancaster, and the Court of Pleas of the county of Durham.
- The word "justice" shall mean any justice of the peace acting for the place in which the matter, or any part of the matter, as the case may be, requiring the cognizance of the "justice" arises.
- The expression "two justices" shall mean two or more justices assembled and acting together in petty sessions, or one stipendiary or police magistrate acting in any police court, for the place in which the matter, or any part of the matter, as the case may be, requiring the cognizance of "two justices" arises.
- The expression "Court of general or quarter sessions" shall mean the Court of general or quarter sessions of the peace having jurisdiction over the whole or any part of the district or place, as the case may be, in which the matter requiring the cognizance of the "Court of general or quarter sessions" arises.
- The word "arbitrators" shall include a single arbitrator, and the words "arbitrators" and "arbitrator" shall include an umpire.
- The word "oath" shall mean and include an affirmation in the case of Quakers, and a declaration in the case of persons allowed by law to make a declaration in lieu of an oath.
- The expression "corporate borough" shall mean any corporate borough mentioned in the schedules annexed to an Act passed in the sixth year of the reign of King William the Fourth, intituled 'An Act for the Regulation of Municipal Corporations in England and Wales,' and any borough incorporated by charter granted or to be granted in pursuance of that or any subsequent Act.
- The word "district" shall mean the entire area, places, or parts of places comprised within the limits of any district to which this Act or any part thereof shall be applied by order in Council or provisional order of the General Board of Health sanctioned by Parliament.
- The expression "corporate district" shall mean a district in which the powers, authorities, and duties of the local board of health of the district are exercised and executed by the council of a corporate borough.
- The expression "noncorporate district" shall mean a district in which the powers, authorities, and duties of the local board of health of the district are not exercised and executed by the council of a corporate borough.
- The word "street" shall apply to and include any highway (not being a turnpike road), and any road, public bridge (not being a county bridge), lane, footway, square, court, alley, passage, whether a thoroughfare or not, and the parts of any such highway, road, bridge, lane, footway, square, court, alley, or passage within the limits of any district.
- The word "house" shall include schools, factories, and other buildings in which more than twenty persons are employed at one time.
- The word "drain" shall mean and include any drain of and used for the drainage of one building only, or premises within the same curtilage, and made merely for the purpose of communicating therefrom with a cesspool or other like receptacle for drainage, or with a sewer into which the drainage of two or more buildings or premises occupied by different persons is conveyed.

1. *Interpretation of Terms.*

"Superior Courts."

"Justice."

"Two justices."

"Court of general or quarter sessions."

"Arbitrators."

"Oaths."

"Corporate borough."

5 & 6 Will. 4, c. 76.

"District."

"Corporate district."

"Noncorporate district."

"Street."

"House."

"Drain."

1. *Interpretation of Terms.*

"Sewer."

The word "sewer" shall mean and include sewers and drains of every description, except drains to which the word "drain" interpreted as aforesaid applies.

"Slaughter-house."

The term "slaughter-house" shall mean and include the buildings and places commonly called slaughter-houses and knackers' yards, and any building or place used for slaughtering cattle, horses, or animals of any description for sale.

"Waterworks company."

The expression "waterworks company" shall mean any corporation, person, or company of persons supplying, or who may hereafter supply, water for their own profit.

"Waterworks."

The term "waterworks" shall include streams, springs, wells, pumps, reservoirs, cisterns, tanks, aqueducts, cuts, sluices, mains, pipes, culverts, engines, and all machinery, lands, buildings, and things for supplying or used for supplying water, also the stock in trade of any waterworks company.

"The local board of health."

The expression "the local board of health" shall mean the persons authorized to execute in each district all or any of the powers, authorities, and duties vested in or imposed upon the local board of health by this Act.

"The officer of health."

"The clerk," etc.

The expressions "the officer of health," "the clerk," "the treasurer," "the surveyor," "the inspector of nuisances," shall mean the persons respectively appointed to be, or authorized to execute the offices of, the officer of health, clerk, treasurer, surveyor, and inspector of nuisances respectively in each district for the purposes of this Act.

It has been held that "land," as explained in this section, includes a right of fishing. (Per *Cresswell and Williams, JJ. (dubitante, Turner, L.J.)*, *Oldaker v. Hunt*, 6 *De G. Mac. & G.* 376.)

In *Eddleston v. Francis* (7 *C. B., N. S.*, 568), a question was raised, but not decided, whether a receiver appointed by the Court of Chancery is an "owner" within the meaning of this section. He would seem, however, to fall within the definition given; and in *Peek v. The Waterloo and Seaforth Local Board of Health* (2 *H. & C.* 709; 33 *L. J., M. C.* 11), it was expressly held that the clause extends to the receiver of the rent *de facto*,—rightfully or wrongfully,—in his own right, or in the right of another.

The section does not give jurisdiction in matters arising in a county to any justice of the county, but only to justices of the petty sessional division in which the matter requiring their cognizance arises. (*Reg. v. Brodhurst*, 32 *L. J., M. C.* 168.)

"Corporate borough."

By the 12 & 13 Vict. c. 94, s. 10, the expression "corporate borough," whenever used in the "Public Health Act, 1848," shall be construed to include any city, borough, port, cinque port, or town corporate named in the schedules annexed to the 5 & 6 Will. 4, c. 76, and any city, borough, port, cinque port, or town corporate incorporated by charter granted or to be granted in pursuance of that or any subsequent Act; and the word "burgesses," wherever used in the said "Public Health Act," shall be construed to mean citizens in the case of a city.

"Burgesses."

"Year."

By the 15 & 16 Vict. c. 52, s. 14, the word "year" shall, for the purpose of the election of local boards of health, acting in execution of the "Public Health Act, 1848," and of the continuance in office of the members of such boards, be taken to mean the interval between any day of election of any such board and the day of election next ensuing.

"Borough."

"Corporate borough."

By the 21 & 22 Vict. c. 98, s. 2, the word "borough," or "corporate borough," when used in this Act, or in any Act conferring powers of a public nature on the corporate bodies of boroughs by their council, shall include all cities, ports, cinque ports, or corporate towns mentioned

in the schedules to the Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act to provide for the regulation of municipal corporations in England and Wales," and all boroughs incorporated by charter granted or to be granted in pursuance of that or any subsequent Act.

Sect. 3. This Act shall not extend to Scotland or Ireland, and it shall not be adopted by any place within the limits of the metropolis as defined for the purposes of the 18 & 19 Vict. c. 120.

Sect. 4. This Act shall be construed together with and be deemed to form part of the "Public Health Act, 1848;" words used in this Act shall be interpreted in the sense assigned to them in the said "Public Health Act;" byelaws framed under this Act shall be subject to confirmation, enforced, and dealt with in all other respects as byelaws under the said "Public Health Act;" and the provisions of each of the said Acts shall, so far as may be consistent with the provisions of this Act, respectively be applicable to all matters and things arising under the other Act.

Sect. 5. This Act shall take effect from the 1st day of September, 1858, in places where the "Public Health Act, 1848," is already in force, wholly or partially: Provided always, that nothing in this Act shall affect the qualification and number of the members of local boards of health in such places, or any power, right, privilege, or liability of any board of improvement commissioners exercising powers of the "Public Health Act, 1848," or of any town council or local board of health, under or by virtue of any general or local Act of Parliament other than the said "Public Health Act."

Sect. 6. Local boards under this Act shall, subject to this Act, have all the powers, rights, duties, and liabilities of local boards of health constituted under the "Public Health Act, 1848," and the Acts incorporated therewith.

Sect. 7. In the construction, for the purposes of this Act, of the Acts hereinafter incorporated, the expression "the special Act" shall mean the "Public Health Act, 1848," as brought into operation within the district, and this Act; the "limits of the special Act" shall mean the "limits of the district;" "the passing of the special Act" shall mean the date of the coming in force of this Act, or, in the case of districts under the "Public Health Act, 1848," the 1st day of September, 1858; and the local board shall, according to the tenor of the incorporated Act, be deemed to be the promoters of the undertaking, "town commissioners," commissioners, or "undertakers;" and all penalties incurred under the incorporated Acts shall be recovered in the same way as penalties incurred under the "Public Health Act, 1848," and be applied in aid of the purposes of that Act and this Act.

See as to the recovery of penalties, the 11 & 12 Vict. c. 63, ss. 129-134, *post*, subsect. 32.

Sect. 8. Whenever the sanction, consent, direction, or approval of the general board of health is required by law to the exercise of the powers of local boards of health or boards of improvement commissioners, such powers may, from the 1st day of September, 1858, be exercised without such sanction, consent, direction, or approval, or any sanction, consent, direction, or approval in lieu thereof, except in so far as is provided by this Act: Provided always, that all sanctions for the mortgage of rates given by the general board of health before the passing of this Act shall continue in full force and effect until all moneys the borrowing of which is thereby sanctioned have been borrowed.

Sect. 9. All proceedings, contracts, matters, and things respectively

# 1. Interpretation of Terms.

5 & 6 Will. 4, c. 76.

Limits of Act.

Provisions of this Act and 11 & 12 Vict. c. 63, to be construed together.

Period at which this Act to take effect.

Not to affect qualification or powers of local boards.

Powers, etc., of local boards under this Act to be the same under 11 & 12 Vict. c. 63, etc.

Construction of terms, for purposes of this Act, etc., in Acts hereinafter incorporated.

Provision in relation to exercise of powers under Public Health Act requiring sanction of general board of health.

Proceedings, contracts, etc.,



## 2. Adoption of the Act of 1848.

begun or made under any section of 11 & 12 Vict. c. 63, repealed by this Act may be proceeded with.

begun or made under any section of the "Public Health Act, 1848," repealed by this Act, may respectively be proceeded with and enforced as if no such repeal had taken place, and all powers exercised or byelaws made under any such section shall continue in force until the new powers and byelaws authorized by this Act are brought into operation, and no such repeal shall affect any decree or order of the High Court of Chancery, or of any other Court of justice, that has been obtained previously to the passing of this Act.

Where under sect. 72 of the Act of 1848, notices had been given and plans lodged for the laying out and making of a new street, it was held that this was a matter or thing begun or made, although nothing had been done towards the formation of the street. (*Felkin v. Berridge*, 15 C. B. N. S. 257.)

## 2. ADOPTION OF THE ACT OF 1848.

Upon petition of one-tenth of the inhabitants of any city, etc., or without petition, when the deaths in any city, etc., appear upon the registrar general's returns to be above a certain proportion, superintending inspector to make local inquiry.

By the 11 & 12 Vict. c. 63, s. 8, From time to time after the passing of this Act, upon the petition of not less than one-tenth of the inhabitants rated to the relief of the poor of any city, town, borough, parish, or place having a known or defined boundary, not being less than thirty in the whole, or where it shall appear or can be ascertained from the last return for the time being made up by the registrar general of births, marriages, and deaths from the deaths registered in a period of not less than seven years that the number of deaths annually in any city, town, borough, parish, or place during the period in respect whereof such return shall have been made have on an average exceeded the proportion of twenty-three to a thousand of the population of such city, town, borough, parish or place, the general board of health may, if and when they shall think fit, direct a superintending inspector to visit such city, town, borough, parish, or place, and to make public inquiry, and to examine witnesses, as to the sewerage, drainage, and supply of water, the state of the burial grounds, the number and sanitary condition of the inhabitants, and as to any local Acts of Parliament in force within such city, town, borough, parish, or place for paving, lighting, cleansing, watching, regulating, supplying with water, or improving the same, or having relation to the purposes of this Act, also as to the natural drainage areas, and the existing municipal, parochial, or other local boundaries, and the boundaries which may be most advantageously adopted for the purposes of this Act, and as to any other matters in respect whereof the said board may desire to be informed, for the purpose of enabling them to judge of the propriety of reporting to her Majesty, or making a provisional order, as hereinafter mentioned.

See, as to the powers of superintending inspectors, s. 121, *post*, subsect. 29.

This and the three following sections of the Act of 1848 are now superseded by the 21 & 22 Vict. c. 98, ss. 12-23, *post*, 428-433.

Inspector to give notice of inquiry, and report to general board the result of the same.

Sect. 9. Before proceeding upon such inquiry the said inspector shall give fourteen days' notice of his intention to make the same, and of a time and place at which he will be prepared to hear all persons desirous of being heard before him upon the subject of such inquiry, by advertisement in some one or more of the public newspapers usually circulated in the parts to which the inquiry will relate, and by causing such notice to be affixed on the doors of the principal churches, chapels, public buildings, and places where public notices are usually affixed within such parts, and in such other manner as may appear to the said inspector to be necessary; and so soon as can be after the completion of such inquiry he shall report in writing to the general board of health, in such manner as they may direct, upon the several matters with respect to which he has been directed to inquire as aforesaid, and upon any other matters with respect to which he may deem it expedient to report

for the purposes of this Act; and if upon such report it appear to the said general board that the boundaries which may be most advantageously adopted for the purposes of this Act, are not the same as those of the city, town, borough, parish, or place with respect to which inquiry has been made, they shall cause the same or some other superintending inspector to visit the parts within the boundaries proposed to be adopted for the purposes of this Act, and, after having given such notice as is hereinbefore prescribed, to hear all persons desirous of being heard before him upon the subject of the said report and to make such further inquiry and report to the said board as they may direct; and upon the presentation of such report or further report, the said board shall cause copies thereof respectively to be published in the parts to which such report or further report respectively relate, in such manner as they may direct, and shall also cause other copies thereof respectively to be deposited with the town clerk of any corporate borough affected thereby, and with the clerk to the commissioners or trustees acting under any local Act of Parliament in force within such parts for lighting, paving, cleansing, watching, regulating, supplying with water, or improving such parts or any of them, or in anywise relating to the purposes of this Act, and with the clerk to the justices acting for any petty sessional division, in which such parts may be, and with the clerk of the board of guardians of the union or parish the whole or part of which may be affected thereby; and if such report or further report relate to parts not being within any corporate borough, the said board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be; and the copies so published or deposited shall be accompanied by a notice stating that within a certain time, not being less than one month from the time of such publication and deposit, written statements may be forwarded to the said board with respect to any matter contained in or omitted from the said report or further report, or any amendment proposed to be made therein; and all such statements shall be deposited with such town clerk, clerk to justices, clerk to the board of guardians, and with such churchwardens or overseers respectively, in like manner as the said copies, and shall, together with such copies, be open to public inspection from the hour of eleven in the forenoon till the hour of three in the afternoon every day during the time specified in the last-mentioned notice, Sundays, Christmas Days, Good Fridays, and days appointed for general fasts or thanksgivings only excepted; and any town clerk, clerk to justices, clerk to the board of guardians, churchwardens, or overseers who shall refuse to receive any document or copy of any document directed to be deposited with him or them as aforesaid, or to allow such inspection, shall be liable for every such offence to a penalty not exceeding five pounds; and after the expiration of such last-mentioned notice the said board may, if they think fit, direct such further inquiry and report as to them may seem necessary and proper.

2. *Adoption of the Act of 1848.*

Upon such report general board may, if they think fit, cause inspector to make further inquiries respecting boundaries, and present a further report, which shall be published. etc.

Sect. 10. If after such inquiry or further inquiry as aforesaid it appear to the said general board of health to be expedient that this Act or any part thereof should be applied to the city, town, borough, parish, or place with respect to which inquiry has been made, upon the petition of such inhabitants as aforesaid, and within the same boundaries as those of such city, town, borough, parish, or place, and within which there is no local Act of Parliament in force for paving, lighting (otherwise than for the profit of proprietors or shareholders), cleansing, watching, regulating, supplying with water, or improving such city, town, borough, parish, or place, or any part thereof, or in anywise relating to the purposes of this Act, they shall report to her Majesty accordingly; and at any time after presentation of such report it shall be lawful for her Majesty, by and with the advice of her Privy Council, to order that this Act or any part thereof shall be applied to and be put in full force and

Cases in which Act shall be put in force by order of her Majesty in council.

2. *Adoption  
of the Act  
of 1848.*

Cases in which  
Act shall be put  
in force by pro-  
visional order of  
general board,  
and sanctioned  
by Parliament.

Exception with  
respect to certain  
local Acts for  
supplying water.

Consent of town  
council, etc., in  
certain cases.

operation within such city, town, borough, parish, or place; and if after such inquiry or further inquiry as aforesaid, it appear to the said general board to be expedient that this Act or any part thereof should be put in force within boundaries not being the same as those of the city, town, borough, parish, or place from which the said petition proceeded, or within boundaries where no petition has been presented from such inhabitants as aforesaid, or within any city, town, borough, parish, or place in which any such local Act of Parliament as aforesaid is in force, they shall make a provisional order under their hands and seal of office accordingly, with such provisions, regulations, conditions, and restrictions with respect to the application and execution of this Act or any part thereof, and with respect to any such local Act, and the repeal, alteration, extension, or future execution of the same, and in all respects whatsoever as they may think necessary under all the circumstances of the case; and such provisional order shall be published in the parts to which the same relates in such manner as the said general board may direct, and shall be deposited with the town clerk of any corporate borough affected thereby, and with the clerk to the commissioners or trustees acting under any such local Act, also with the clerk to the justices acting for any petty sessional division in which such parts may be, and with the clerk of the board of guardians of the union or parish the whole or part of which may be affected thereby; and if such provisional order relate to parts not being within any corporate borough, the said board shall cause other copies of the same to be deposited with the churchwardens or overseers of the poor of any parish in which such parts or any of them may be; and in case it shall be enacted by any Act of Parliament hereafter to be passed that the whole or part of any provisional order or orders of the general board of health shall be confirmed and be absolute, the whole or part of such provisional order or orders which shall be so confirmed shall be as binding and of the like force and effect as if the same had been expressly enacted by Parliament, and every such Act shall be deemed a public general Act; but no such provisional order shall have any force or effect, nor shall this Act or any part thereof be applied in either of the cases last aforesaid, except for the purposes of such inquiry, further inquiry, report, or provisional order, without the previous authority of Parliament; and no such provisional order, or any altered or amended order, shall be made with respect to any local Act of Parliament under which any waterworks company is empowered to construct waterworks or supply water for their own profit, without the consent of the waterworks company empowered by such local Act first had and obtained: Provided always that, except for the purposes of main sewerage, no corporate borough or any part thereof shall be included in any district not exclusively consisting of the whole or part of one such borough without the previous consent of the council under the common seal of the borough; but nothing herein contained shall be construed to require such consent to the constitution of a district exclusively consisting of the whole or part of one such borough for all or any of the purposes of this Act, nor to hinder or prevent the application of all or any of the provisions of this Act to parts exclusively consisting of the whole or part of one such borough, although the same parts or any of them may have been already included within a district for the purposes of main sewerage: Provided, also, that, except for the purposes of main sewerage, no parts beyond the boundaries of a corporate borough shall be included in any district comprising the whole or part of any such borough, except upon the petition of a majority of the owners of property and ratepayers who would be qualified to vote in the election of members of a local board of health for the parts proposed to be so included; but nothing herein contained shall be construed to require such petition in order to the constitution of a district exclusively consisting of parts not within the boundaries of any such borough, nor to hinder or prevent the application of all or any of the provisions of

this Act to a district exclusively consisting of such last-mentioned parts, although the same parts or any of them may have been already included within a district for the purposes of main sewerage.

Where a parish consisting of three hamlets and a township petitioned, and the inspector recommended the application of the Act to the township only, but the general board reported that the Act should be applied to the whole parish, an order in council in accordance with the report of the general board was held to be valid. (*Barber v. Jessop*, 1 H. & N. 578; 26 L.J., Exch. 186.)

See, as to orders in council and provisional orders, sect. 142, *post*, subsect. 34.

The general board of health made a provisional order extending this Act to Tynemouth, a district within which were parts of the Shields turnpike roads, made under local turnpike Acts. A local sanitary Act also applied to the district. The provisional order altered the local sanitary Act, and directed, *inter alia*, that, from and after the passing of any Act of Parliament confirming that order, sect. 50 of "The Town Improvement Clauses Act, 1847," should be incorporated with the local sanitary Act. The order was confirmed by statute, "so far as authorized by 'The Public Health Act.'" "The Towns Improvement Clauses Act, 1847," sect. 50, forbids trustees of any turnpike road from levying toll within the limits of the special Act. The surveyor of the local board of Tynemouth, by order of the board, removed the Shields turnpike gates within the district. The clerk of the Shields turnpike trustees sued him in trespass for so doing:—Held, by *Coleridge, Erle, and Crompton, JJ.* (dissentiente *Lord Campbell, C.J.*), that the part of the order incorporating "The Towns Improvement Clauses Act, 1847," sect. 50, was not authorized by "The Public Health Act, 1848," and was void; and the plaintiff had judgment. (*Clayton v. Fenwick*, 6 El. & Bl. 114; 25 L.J., Q.B. 226.) Another provisional order applied to the same borough ordered that this Act should apply and be in force throughout the borough except sect. 50, and so much of sect. 88 as provides that the occupier of any land used as arable, meadow, or pasture ground only, etc., and the occupier of any land covered with water or used only as a canal or towing path, or as a railway constructed under any Act of Parliament for public conveyance, shall be assessed in one-fourth only of the net rateable value; and the rating clauses of the local Act were repealed, and others substituted, by which all hereditaments in a part of the district were to be rated upon two-thirds of the rateable value. A railway company having been rated accordingly at two-thirds in one part of the district and at the full rateable value in the rest of the district, in respect of their railway proper, it was held that such a severing of sect. 88 was not within the powers given by sect. 10 to the general board of health. (*The North-Eastern Ry. Co. v. The Mayor, etc., of Tynemouth*, *Law Rep.*, 3 Q.B. 723.)

As to the supply of water, see sect. 75, *post*, 468. And as to the qualification for voting in the election of members, see sect. 20, *post*, 437.

See, as to the union of adjoining districts, the 21 & 22 Vict. c. 98, s. 27, *post*, 437.

Sect. 11. From and after the making of any such order in council, or the passing of any Act of Parliament confirming any provisional order of the general board of health, the costs, charges, and expenses specially incurred by or under the direction of the said general board, or of any superintending inspector, in relation to any inquiry or further inquiry as aforesaid, shall, to such extent and amount as the Commissioners of her Majesty's Treasury by order under their hands may think proper to direct, become a charge upon the general district rates levied in such district under the authority of this Act, and be repaid to the said commissioners by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the

## 2. Adoption of the Act of 1848.

Costs of preliminary inquiry, etc., with consent of treasury, to become a charge upon the general district rates.

3. *Constitution of the Local Board under the Act of 1848.*

principal sum due in respect of the said costs, charges, and expenses as shall from time to time remain unpaid.

See sect. 87, *post*, 478, empowering the local board to levy a general district rate.

3. CONSTITUTION OF THE LOCAL BOARD UNDER THE ACT OF 1848.

Town council to be the local board in districts consisting of one borough, etc.

Selection, etc., of local boards by town councils.

Selection of part of local board by town councils, and part by owners and rate-payers.

By the 11 & 12 Vict. c. 63, s. 12, in every district exclusively consisting of the whole or part of one corporate borough, the mayor, aldermen, and burgesses of such borough shall be, by the council of the borough, within and for such district the local board of health under this Act, and such council shall exercise and execute the powers, authorities, and duties of such local board according to the laws for the time being in force with respect to municipal corporations in England and Wales; and in every district exclusively consisting of two or more of such boroughs, or of one or more of such boroughs and also of part of any other such borough or boroughs, or exclusively consisting or part of two or more of such borough or boroughs, the mayors for the time being of the boroughs whereof the whole or part is within such last-mentioned district, and such number of other persons as shall be fixed by such provisional order as aforesaid to be selected by each of such councils respectively out of their own number, or from persons qualified to be councillors of the borough in respect of which the selection is to be made, and shall be named and selected by such councils accordingly, shall, within and for such district, be the local board of health under this Act; and in every district comprising the whole or part of any such borough or boroughs, and also parts not within the boundaries of any such borough, the mayor or mayors for the time being of the borough or boroughs whereof the whole or part is within such last-mentioned district, and such number of other persons as shall be fixed by such provisional order to be selected by such council or each of such councils respectively out of their own number, or from the persons qualified to be councillors of the borough in respect whereof the selection is to be made, and shall be named and selected by such council or councils accordingly, shall, together with such number of persons as shall be elected as hereinafter mentioned in respect of such non-corporate parts, be, within and for such district, the local board of health under this Act; and the first selection by any such council in pursuance of this Act shall be made on a day to be appointed by Parliament; and each person selected by the council out of their own number shall be a member of the local board with which he is selected to act so long as he continues without re-election to be member of the council from whom he was selected, and no longer; and each person selected by the council otherwise than out of their own number shall be a member of the local board with which he is selected to act for one year from the date of his selection, and no longer; and in case of any vacancy in the number selected, some other person or persons (as the case may require) shall be selected by the council by whom the person or persons causing the vacancy was or were selected, within one month after the occurrence of the vacancy; and the meeting of any council at which any selection as aforesaid is made in pursuance of this Act shall to all intents and purposes be deemed to be a meeting held in pursuance of an Act passed in the sixth year of the reign of King William the Fourth, intituled "An Act for the Regulation of Municipal Corporations in England and Wales."

5 & 6 Will. 4.  
. 76.

The corporation may be sued upon contracts made by them in accordance with the statute. (*Nowell v. The Mayor, etc., of Worcester*, 9 *Exch.* 457; 23 *L.J.*, *Exch.* 139.)

An action also will lie against a local board of health of a corporate district as a body for negligently carrying out works within their powers, so as to cause injury to any person, *e.g.* for so negligently and improperly constructing a sewer as to cause a nuisance by its discharge.

(*The Southampton and Itchin Floating Bridge Co. v. The Southampton Local Board*, 28 L.J., Q.B., 41.)

As to the election of members of the board, see sect. 13, *infra*, and sect. 20, *post*, 437; and as to the notice required to be given previously to the meetings of the council, see the 5 & 6 Will. 4, c. 76, s. 79, *Vol. II.*, tit. "*Corporations*."

The term "year" means until the day of election next ensuing. See the 15 & 16 Vict. c. 52, s. 14, *ante*, 418.

See, as to the division of the district into wards, the 21 & 22 Vict. c. 98, s. 24, *post*, 435.

Sect. 13. In every district comprising the whole or part of any corporate borough or boroughs as aforesaid, and also any part or parts not within the boundaries of any corporate borough or boroughs, such number of persons, qualified as hereinafter prescribed, as shall be fixed by such provisional order as aforesaid to be elected for such part or parts or for each of such parts respectively, shall from time to time be elected in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, together with the persons selected as aforesaid in respect of the corporate parts of such district, and shall be, within and for such district, the local board of health under this Act; and in every district not comprising the whole or part of any corporate borough or boroughs, but being a district to which this Act may be applied by order of her Majesty in Council, such number of persons, qualified as hereinafter prescribed in this behalf, as shall be fixed by such order in Council, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the local board of health under this Act; and in every district not comprising the whole or part of any corporate borough or boroughs, and being a district to which this Act cannot be applied without the authority of Parliament, such number of persons, qualified as hereinafter prescribed, as shall be fixed by such provisional order as aforesaid, shall be elected, in such manner and by such owners of property and ratepayers as hereinafter mentioned, to be, and shall be, within and for such district, the local board of health under this Act, and the first election for any district or part of a district shall take place on a day to be appointed by order of her Majesty in Council or by Parliament (as the case may require); and one-third of the number elected for the whole or any part or parts of a district respectively shall go out of office on such day in each year subsequently to that of the first election as shall be appointed by such order in Council or provisional order as aforesaid (as the case may require); and the order in which the persons first elected shall go out of office shall be regulated by each local board: Provided always, that if the number of persons to be elected be not divisible by three, the proportion to go out of office in each year shall be regulated by such order in Council or provisional order (as the case may require), so that as nearly as may be one-third shall go out of office in each year; and if the number of persons to be elected for any part of a district be less than three, the persons elected shall go out of office on such day in each year, or at such other period, not being less than a year, as such order in council or provisional order (as the case may require) shall direct; but no person elected shall in any case continuously remain in office for more than three years; and on the days appointed for going out of office a number of persons shall be elected equal to the number of those so going out, and so many others as may be necessary to complete the full number of the local board of health in respect of which the election is to be made.

As to the mode of electing members, see the 11 & 12 Vict. c. 63, s. 20, *post*, 437.

As to the meaning of the term "year," see the 15 & 16 Vict. c. 52, s. 14, *ante*, 418.

3. *Constitution of the Local Board under the Act of 1845.*

Election of members of local board by owners and ratepayers.

3. *Constitution of the Local Board under the Act of 1848.*

As to the proceedings to be taken in case of a failure to elect, or lapse of a board, see the 21 & 22 Vict. c. 98, s. 11, *post*, 442.

As to the division of the district into wards, see the 21 & 22 Vict. c. 98, s. 24, *post*, 435.

The first election of a local board, ordered to consist of nine members, was held on the 21st July, 1854. On the 4th January, 1855, the board declared that three members who had become disqualified, in pursuance of sect. 18, by non-attendance, should be the one-third who should go out of office on the 31st March, 1855 (the day named in the order in Council). Not any of the six other persons went out of office on that day; and at the election then held, three persons only were elected. The Court, however, decided that the election was regular, and that a rate made on the 5th July, 1855, under the hands of five persons who had been original members of the board, was valid, and could be enforced. (*Howitt v. Manfull*, 6 *El. & Bl.* 736; 25 *L. J.*, *Q. B.* 411.)

Regulations as to the number of persons to be selected or elected members of local boards.

In case of vacancies, remaining members may act.

Persons both selected and elected, etc., to serve in respect of one title only.

Members elected for part of a sewerage district to constitute separate board for other purposes of the Act.

Qualification of elected members.

Sect. 14. The number of persons to be selected or elected for the whole or any part of a district, shall from time to time be regulated by such order in Council or provisional order as aforesaid (as the case may require), due regard being had to the size and circumstances of each district, as may appear to be just and proper; and that any member of the local board of health, after going out of office, resigning, or otherwise ceasing to be such member, may, if otherwise qualified, be again selected or elected (as the case may require); and in the event of any vacancy in the number of persons elected, by death, resignation, or otherwise, between the times appointed for election as aforesaid, or if at any time the said local board be without its full number of members, the remaining members shall continue and be as competent to act until the time appointed for election, or until the full number is selected or elected (as the case may require), as if no vacancy had occurred; and if any person be both selected and elected to be a member of the local board of health, he shall, within three days after notice thereof from the clerk, choose, or in default of such choice the local board of which he is so selected and elected to be a member shall determine, the title in respect of which he shall serve, and immediately upon such choice or determination the person so selected and elected shall be deemed to be member only in respect of the title so chosen or determined, and his office as member in respect of any other title shall thereupon become vacant.

Sect. 15. If any corporate borough, or part thereof, be included only for the purposes of sewerage in any district comprising any part or parts not within the boundaries of any such borough, and the last-mentioned part or parts, or any of them, be constituted a district or districts for any other purposes of this Act, the persons elected for such sewerage district shall, within and for the separate district within which they shall have been so elected, be and constitute the local board of health, in the same manner and as fully to all intents and purposes as if they had been expressly elected to constitute the same.

Sect. 16. Every person elected as aforesaid shall at the time of his election, and so long as he shall continue in office by virtue of such election, be resident within the district for which or for part of which he is elected, or within seven miles thereof, and be seised or possessed of real or personal estate, or both, to such value or amount as shall be fixed by such order in Council or provisional order as aforesaid (as the case may require), within the limits next hereinafter provided, or be so resident, and rated to the relief of the poor of some parish, township, or place of which some part is within such district or part of a district, upon such annual value as shall be fixed by such order in council or provisional order (as the case may require), within the limits next hereinafter provided: Provided always, that it shall not be lawful to require that any person be seised or possessed as aforesaid to a value or amount exceeding one thousand pounds, or to require that any person be rated upon an

annual value exceeding thirty pounds: Provided also, that if two or more persons be jointly seised or possessed of real or personal estate, or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons be jointly rated in respect of any property which, if equally divided between them, would qualify each to be so elected, each of the persons so jointly seised, possessed, or rated may be elected; but the same property shall not at the same time qualify both the owner and the occupier thereof."

As to the qualification under the 21 & 22 Vict. c. 98, see sect. 24 of that Act, *post*, 435.

Sect. 17. No person elected as aforesaid, or selected by any council otherwise than out of their number, shall act as member of the local board of health (except in administering the following declaration) until he shall have made and signed before two or more other members for the district for which he is elected a declaration in writing to the effect following (that is to say):—

*I, A. B., do solemnly declare that I am seised or possessed of real or personal [or real and personal] estate to the value or amount of [or that I am rated to the relief of the poor of upon the annual value of ].*

*(Signed) A. B.*

*Made before us, C. D. and E. F., Members of the Local Board of Health for the district of this day of .*

And such declaration shall be made and signed by the person making the same, and shall be filed and kept by the clerk; and any person who shall falsely or corruptly make and subscribe the said declaration, knowing the same to be untrue in any material particular, shall be deemed guilty of a misdemeanour.

3. *Constitution of the Local Board under the Act of 1848.*

Declaration to be made by members of local boards before acting.

False declaration a misdemeanour.

Sect. 18. Any person elected as aforesaid, or selected by any council otherwise than out of their own number, who neglects to make and subscribe the declaration required by this Act for the space of three months next after his selection or election, and any person selected or elected under this Act who, during three successive months, is absent from all meetings and committees of the local board of health of which he is elected or selected to be member, shall be deemed to have refused to act, and shall cease to be a member of such local board, and his office as such shall thereupon become vacant.

Person neglecting to make declaration or to act for three months to cease to be a member.

But see now, as to the effect of the absence of any member, the 21 & 22 Vict. c. 98, s. 25, *post*, 436. And see *Howitt v. Manfull*, *ante*, 426.

Sect. 19. No bankrupt, insolvent, or other person not qualified as aforesaid, shall be capable of being elected as aforesaid; and if any person, after being so elected or selected by any council otherwise than out of their own number, shall lose or discontinue to hold his qualification, or shall be declared bankrupt, or shall apply to take the benefit of any Act for the relief or protection of insolvent debtors, or shall compound with his creditors, or if any member selected or elected under this Act shall accept or hold any office or place of profit under the local board of health of which he is member, or shall in any manner be concerned in any bargain or contract entered into by such board, or participate in the profit thereof, or of any work done under the authority of this Act in or for the district for which he is member, then, and in every such case, such person shall, except in the cases next hereinafter provided, cease to be such member, and his office as such shall thereupon become vacant; and any person who, not being duly qualified to act as member of the said local board, or who has not made and subscribed the declaration required of him by this Act, or who, after being disqualified or disabled from acting by any provision of this Act, shall so act, shall for every

Disqualifications.



4. *Adoption  
of the Act of  
1858.*

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such offence be liable to a penalty of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt; and in such action it shall be sufficient for the plaintiff to prove in the first instance that the defendant at the time when the offence is alleged to have been committed acted as such member; and the burden of proving qualification, and the making and subscription of the declaration, or negating disqualification, by reason of non-residence, or not being seised or possessed of the requisite real or personal estate, or both, shall be upon the defendant: Provided always, that no person, being a proprietor, shareholder, or member of any company or concern established for the supply of water, or for the carrying on of any other works of a like public nature, shall be disabled from being, continuing, or acting as member of the said local board by reason of any contract entered into between such company or concern and such board; but no such person shall vote as a member of the said local board upon any question in which such company or concern is interested: Provided also, that all acts and proceedings of any person disqualified, disabled, or not duly qualified as aforesaid, or who has not made and subscribed the said declaration, shall, if done previously to the recovery of the last-mentioned penalty, be valid and effectual to all intents and purposes whatsoever.

In order to sue for the penalty given by this section, the plaintiff must first obtain the consent in writing of the attorney-general, as required by sect. 133, *post*, subsect. 32.

Where a member of a local board had sold some iron to a party who had contracted to supply the board with iron railings, and who purchased the iron for the purpose of performing the contract, the Court held that the member was not interested in the contract with the board within the meaning of the 5 & 6 Will. 4, c. 76, s. 28. (*Le Feuvre v. Lankester*, 3 *El. & Bl.* 530; 23 *L. J., Q. B.* 254. And see the 21 & 22 Vict. c. 98, s. 25, *post*, 436.)

By the 29 & 30 Vict. c. 90, s. 46, *post*, subsect. 32, local boards are incorporated, and are to be designated by such names as they usually bear or adopt, and may sue or be sued in such names, and may hold lands for the purposes of the Acts conferring powers upon them in their character of local boards.

#### 4. ADOPTION OF THE ACT OF 1858.

By the 21 & 22 Vict. c. 98, s. 12, this Act may be adopted,—

- (1.) In corporate boroughs to which the "Public Health Act, 1848," has not been applied, by a resolution of the council assembled at a meeting held for the purpose: Provided always, that this Act shall not be adopted in corporate boroughs until after the election of councillors on the 1st day of November, 1858.
- (2.) In other places under the jurisdiction of a board of improvement commissioners, where all or part of the commissioners are elected by ratepayers, or by owners and ratepayers, by a resolution of such improvement commissioners assembled at a meeting held for the purpose.
- (3.) In all other places having a known or defined boundary, by a resolution of the owners and ratepayers.

But no such resolution passed by any council or board of improvement commissioners shall be valid unless a month's previous notice of the meeting, and of the purpose thereof, has been given in manner in which notices of meetings of such council or board of commissioners are usually given, nor unless two-thirds of the members present at the meeting concur in the resolution for such adoption; and it shall be lawful for the chairman of any such meeting, with the consent of a majority of the members present, to adjourn the same from day to day.

Act to be adopted  
by resolution of  
council, improve-  
ment commis-  
sioners, or  
owners and rate-  
payers.

By the 26 Vict. c. 17, sects. 2 *et seq.*, *post*, 434, restrictions are placed upon the adoption of the Act by certain places.

A district formed for ecclesiastical purposes, under the 6 & 7 Vict. c. 37, consisting of parts of two townships, each of which townships separately maintains its own poor, is a place having a known or defined boundary. (*Reg. v. Northowram, Law Rep.* 1 Q. B. 110; 35 L. J., Q. B. 90.)

Sect. 13.—(1.) Meetings for the purpose of the preceding section shall be summoned on the requisition in writing of any twenty ratepayers or owners.

4. *Adoption of the Act of 1858.*

As to summoning meetings for purpose of preceding section.

In corporate boroughs by the mayor.

In other places under the jurisdiction of such improvement commissioners as aforesaid, by the chairman of the said commissioners.

In places having known and defined boundaries, not being corporate boroughs, or towns under the jurisdiction of such improvement commissioners as are hereinbefore mentioned, by the churchwardens or one of them, or if there are no churchwardens the overseers or one of them, or if there is none of the officers respectively above enumerated, or if such officer in any case neglects, is unable, or refuses to perform the duties hereby imposed on him, by any person appointed by one of her Majesty's principal secretaries of state.

(2.) In such places as last aforesaid the summoning officer shall upon such requisition fix a time and place for holding such meeting, and shall forthwith give notice thereof—

Notice of.

By advertisement in some one or more of the newspapers circulated in the place.

By causing such notice to be affixed to the principal doors of every church and chapel in the place to which notices are usually affixed.

(3.) The meeting, on its assembling together, shall choose one of its number as chairman, who may, with the consent of a majority of the persons present adjourn the same from day to day.

Meeting to choose chairman

(4.) The chairman shall propose to the meeting the resolution for the adoption of the Act, and the meeting shall decide for or against such adoption: Provided, that if any owner or ratepayer shall demand that such question be decided by a poll of the owners and ratepayers, such poll shall be taken by voting papers in the form A. given in the schedule to this Act, in the same way, and with the same conditions as to notice of voting, delivery, filling up, collection, examination, declaration of the result, custody of voting papers, penalty for neglect or refusal to comply with the provisions of the Act, scale of votes, and in all other respects whatsoever as is provided in the "Public Health Act, 1848," in respect of the election of local boards of health; and if no poll is demanded, or if the demand for a poll is withdrawn by the parties making the same, a declaration by the chairman shall, in the absence of proof to the contrary, be sufficient evidence of the decision of such meeting.

Rules as to passing of resolutions of owners and ratepayers.

(5.) If any person fabricates, in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting paper or personates any person entitled to vote in pursuance of the "Public Health Act, 1848," or this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interrupts the distribution of any voting papers, or distributes the same under a false pretence of being lawfully authorized so to do, he shall for every such offence be liable, on conviction before two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour.

Penalty for forging, etc., of voting papers.

See the provisions of the 11 & 12 Vict. c. 63, ss. 23–28, as to the election of local boards, *post*, 439–441.

See the 11 & 12 Vict. c. 63, s. 20, as to persons entitled to vote, *post*, 437.

4. *Adoption of the Act of 1858.*

By the 24 & 25 Vict. c. 61, s. 1, *post*, 433, ratepayers or owners making a requisition for the summoning of meetings, are to give security for costs.

Provision as to less place included within the limits of a greater.

Sect. 14. In cases where any place hereby authorized to adopt this Act includes within its limits any less place which, if it were not so included, would of itself be authorized to adopt this Act, such less place shall not be entitled to adopt this Act unless the greater place within the limits of which it is included has refused to adopt the same, or unless it has been determined by one of her Majesty's principal secretaries of state, in manner hereinafter mentioned, (a) that such less place ought, as respects the adoption of this Act, to be excluded from the limits of such greater place.

This section applies not only to a place having a defined boundary of its own, but also to a place which has petitioned and has had its boundaries settled under sect. 16; and such latter place, therefore, cannot adopt the Act without the previous refusal to do so of the greater place within the limits of which it is situate. (*Re Matlock*, 2 B. & S. 543; 31 L. J., Q. B. 177.)

Power for partial adoption of Act.

Sect. 15. Any corporation or body of commissioners exercising powers for sanitary regulations under the provisions of any local Act, may adopt any part or parts of this Act by resolution of the council or commissioners, and such resolution shall in every case be passed and forwarded to one of her Majesty's principal secretaries of state, as provided in this Act for the adoption thereof, (b), and thereupon the part or parts of this Act named in such resolution shall be in force within the district comprised in such local Act as fully and effectually as if such part or parts of this Act had been enacted in such local Act: Provided always, that when the parts of this Act thus adopted confer any power of borrowing money, such power shall be exercised subject to the provisions of this Act with respect to borrowing (c).

By the 26 Vict. c. 17, s. 7, *post*, 435, this power is not exhausted by one adoption, but may be exercised from time to time. See, as to the adoption of the "Local Government Act" in the counties of Chester, Lancaster, and Derby, the 26 & 27 Vict. c. 70.

By the 24 & 25 Vict. c. 61, s. 2, *post*, 433, the powers given by this section are extended to every local authority therein mentioned.

*Adoption of Act by Place not having a known or defined Boundary.*

Provision as to settling boundaries on petition.

Sect. 16.—(1.) Any place not having a known or defined boundary may petition one of her Majesty's principal secretaries of state to settle its boundary for the purposes of this Act.

Rules as to petitions for settlement of boundaries (d).

(2.) The petition shall state the proposed boundaries of the place, shall be signed by one-tenth of the ratepayers resident within such boundaries, and shall be supported by such evidence as the said secretary of state may require.

(3.) Upon the receipt of such petition, the secretary of state may direct inquiry to be made as to the genuineness of the petition, and as to the propriety of the proposed boundaries; and

(4.) Fourteen days' notice of the time, place, and subject of such inquiry shall be given in the place to which it refers.

(5.) The said secretary of state may, upon consideration of the matter, either dismiss the petition altogether, or make order as to the boundaries

(a) See sect. 20, *post*, 432.

(b) See sect. 19, *post*, 432.

(c) See sects. 57–59, *post*, subject. 25, and 24 & 25 Vict. c. 61, s. 3, *post*,

subject. 30.

(d) See *Re Todmorden*, *post*, 431, and *Re Matlock*, *supra*.

of the place. He may also make order as to the costs of the proceedings under this section, and the parties by whom such costs are to be borne.

4. *Adoption of the Act of 1858.*

(6.) Any place the boundaries of which have been settled in pursuance of the foregoing provisions shall thenceforth, for the purposes of this Act, be deemed to be a place with a known and defined boundary, and may adopt this Act accordingly; and for the purpose of enabling it so to do, a summoning officer shall be appointed by the order settling the boundaries, whose duty it shall be forthwith to take all such steps as may be necessary for convening a meeting of the ratepayers to decide as to the adoption of this Act; and if such officer dies, becomes incapable, neglects or refuses to perform his duties, the said secretary of state may, on the application of any four ratepayers, appoint another officer in his room.

Any place may adopt this Act when boundary settled.

*Appeal against Adoption of Act.*

Sect. 17.—(1.) In cases where a resolution adopting this Act has been passed in any place, if any number, being not less than one-twentieth of the owners and ratepayers of such place, such twentieth to be one-twentieth in number of the owners and ratepayers of the place, taken together, or the owners and ratepayers in respect of one-twentieth of the rateable property in the place, are desirous that the whole or any part of such place should be excluded from the operation of this Act, they may present a petition to one of her Majesty's principal secretaries of state, appealing against such resolution, and praying that such exclusion may be made.

Power to appeal, by petition, against resolution to adopt this Act.

(2.) Such petition shall be presented within twenty-one days from the date of the passing of the resolution appealed against, and shall, where the exclusion of part of a place only is prayed for, state—

Such petition to be presented to secretary of state.

1. The part of the place proposed to be excluded, accompanied with an explanatory plan; and
2. The reasons for such exclusion.

It shall be subscribed by the owners and ratepayers presenting the same.

(3.) Upon the receipt of any such petition as aforesaid, the said secretary of state may direct inquiry in the proposed district—

Power to secretary of state to direct inquiry to be made.

- As to the genuineness of the petition; and
- As to the matters alleged in such petition.

(4.) Fourteen days' notice of the time, place, and subject of such inquiry shall be given.

Notice of inquiry.

(5.) The said secretary of state shall make order with respect to the matter in question on such appeal, and such order shall be binding on the place in respect of which it is made, and there shall be stated in such order the time at which this Act is to come into force.

Order to be made by secretary of state.

By the 26 Vict. c. 17, s. 3, *post*, 434, the term of six weeks is substituted for that of twenty-one days.

Where an appeal was presented against an order settling the boundaries under the preceding section, on the ground that the order comprised land not included within the limits from which the petition proceeded, and the secretary of state, after inquiring into the circumstances, dismissed the appeal, and ordered that the Act should, after the expiration of one month from the date of the order, have the force of law within the district, the Court of Queen's Bench refused to interfere by granting a *certiorari* to bring up the order settling the boundaries. (*Ex parte Smith*, 1 B. & S. 412; S. C., *Re Todmorden*, 30 L. J., Q. B. 305.)

Sect. 18. It shall be lawful for any owner or ratepayer who disputes

Appeal to secretary of state in

#### 4. *Adoption of the Act of 1858.*

case of alleged invalidity of vote for adoption of this Act.

the validity of the vote for the adoption of this Act to appeal within fourteen days from the declaration of the vote to one of her Majesty's principal secretaries of state, setting forth the grounds on which he disputes the validity of such vote, and it shall be lawful for any of her Majesty's principal secretaries of state, on such appeal, to direct inquiry by any officer employed by him in the execution of this Act into the circumstances of the case, and to issue such order thereon as he may deem requisite to determine the questions arising on such appeal, and as to the validity or invalidity of such vote.

By the 26 Vict. c. 17, s. 3, *post*, 434, the time for this appeal is extended to six weeks from the date of the resolution adopting the Act.

The order of the Secretary of State is conclusive as to the validity of the vote. (*Ex parte Bird*, 28 L. J., Q. B. 223.)

#### *General Provisions in relation to Adoption.*

Notice as to adoption of Act to be given to Secretary of State.

Sect. 19. Whenever a resolution adopting this Act has been passed in any place, notice thereof shall be given to one of her Majesty's principal secretaries of state by the following persons; that is to say,—

In corporate boroughs, by the mayor :

In other places under the jurisdiction of such improvement commissioners as aforesaid, by the chairman of the board of commissioners :

In other places, by the summoning officer.

The notice so sent shall be in writing under the hand of the officer hereby required to give the same; and it shall be the duty of such last-mentioned officer to publish a copy of such notice in manner following; that is to say,—

By advertisement for three successive weeks in some one or more of the newspapers circulated in the place :

By causing a copy of such notice to be affixed to the principal doors of every church and chapel in such place to which notices are usually affixed.

And when such notice has been so given, and the time for such appeal has expired, or such appeal has been dismissed (*a*), a notice shall be published in the *London Gazette*, by one of her Majesty's principal secretaries of State, that this Act has been adopted within such place.

Provision as to the time when this Act shall take effect.

Sect. 20. Whenever any resolution adopting this Act has been passed in any place, this Act shall, at the expiration of two months (*b*) from the date of the passing of such resolution, or in the event of an appeal (*a*), or of a division of the district into wards as hereinafter provided (*c*), then at such time as may be mentioned in the order made on such appeal, or in the order setting out wards, have the force of law within such place; and the expiration of such period of two months (*b*), or such date as may be mentioned in the said order as the time for this Act to come into force, shall be called the date of the constitution of the district; provided that the provisions of this Act relating to purposes already included in any local Act in force within the district with relation to any of the purposes of the "Public Health Act, 1848," or this Act, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals, for their own pecuniary benefit, notwithstanding the adoption of the Act, as hereinbefore provided, shall not come into operation until an order has been made and confirmed, as

(*a*) See, as to an appeal, sects. 17 & 18, *ante*, 431.

(*b*) By the 26 & 27 Vict. c. 70, s. 7, which relates to the counties of Chester, Derby, and Lancaster only,

twenty-one days are substituted for two months, where that Act is adopted.

(*c*) See, as to the division of the district into wards, sect. 24, *post*, 435.

hereinafter prescribed (a), for the future execution, repeal, or alteration of the said local Act.

#### 4. Adoption of the Act of 1858.

Sect. 21. No objection shall be made at any trial or in any legal proceeding to the validity of the adoption of this Act, or to any order made in pursuance of this Act, or to any proceedings upon which such order was founded, unless the objector has given fourteen days' previous notice to the other parties interested in such trial or proceeding of his intention to make the same, specifying fully the nature of the objection to be made; and no objection whatever in respect of the matters mentioned in this section shall be admissible at any trial or in any legal proceeding after the expiration of six calendar months from the date of the constitution of the district (b).

As to objections made to adoption of this Act.

Sect. 22. Publication of a notice by a secretary of state once in the *London Gazette*, and by the mayor, chairman of the board of improvement commissioners, or summoning officer, respectively, for three successive weeks in any newspaper published and circulated in the town or district that this Act has been adopted in any place, shall be conclusive evidence of such adoption.

Proof of adoption.

Sect. 23. In cases where this Act has been adopted by any place, all costs, charges, and expenses incurred by any of her Majesty's principal secretaries of state, in relation to any such adoption, or to any proceedings connected therewith, or which such secretary is required to take under this Act, and not hereby otherwise provided for, shall, to such amount as the treasury, by order, think proper to direct, become a charge upon the general district rates levied in such district under the authority of this Act, and be repaid to the treasury by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

Provision as to payment of costs, etc., incurred in relation to adoption.

By the 24 & 25 Vict. c. 61, s. 1, ratepayers or owners making a requisition for the summoning of meetings (c) for the purpose of deciding as to the adoption of "The Local Government Act, 1858," shall, if required, give security in a bond, with two sufficient sureties, for repayment to the summoning officer, in the event of the Act not being adopted, of the costs incurred in relation to such meetings or polls taken in pursuance of any demand made at such meetings, the amount of the security to be given by such sureties, and their sufficiency, and the amount of such costs, to be settled by agreement between the summoning officer and such ratepayers or owners, or in the event of disagreement between them by any justice of the peace acting in and for the place in which it is proposed that the said Act shall be adopted.

Provision as to costs of proceedings with a view to adopting the "Local Government Act," when that Act is not adopted.

Sect. 2. The power of adopting any part of "The Local Government Act, 1858," given by the 15th section of that Act to any corporation or body of commissioners exercising powers for sanitary regulation under the provisions of any local Act, shall extend to every local authority invested with powers of town government and rating by any local Act, by whatever name such local authority is called, and the words "local board" or "board of commissioners" as used in the said "Local Government Act" shall apply to such local authority: Provided always, that whenever the members of such local authority are elected for life they shall adopt, in lieu of the provisions for elections contained in the local

Every local authority invested with powers of town government may adopt any part of "Local Government Act."

Provision for election of such local authorities when elected for

(a) See sect. 77, *post*.

(c) See, as to the summoning of

(b) See *Re Todmorden*, 30 *L. J.*, meetings, the 21 & 22 Vict. c. 98, s. 13, *ante*, 429.

Q. B., 305.

4. *Adoption of the Act of 1858.*

life at the time of adopting "Local Government Act."

Act, the provisions for and in relation to elections prescribed by "The Public Health Act, 1848" (a), and "The Local Government Act, 1858" (b), and within one month of such adoption one-third of the members of such local authority shall retire, the order of retirement to be fixed by the local authority, and the election of members in lieu of such retiring members shall be governed in all respects by the said "Public Health Act, 1848 (a)," and "Local Government Act, 1858 (b)," and be conducted by the chairman of the local authority: Provided also, that such adoption shall not affect the qualification fixed for members of such local authority by the local Act under which it is constituted, or the qualification and tenure of office of *ex officio* members of such local authority.

Restriction as to the adoption of the Act by certain places.

By the 26 Vict. c. 17, sect. 2, the adoption of the "Local Government Act, 1858," by any place where that Act was not in force on the 1st day of March, 1863, and where the population according to the then last census is less than three thousand, shall not be of any validity unless it is approved by one of her Majesty's principal secretaries of state, on proof being given to his satisfaction that by reason of special circumstances it is expedient that such place should be allowed to adopt the Act.

Before signifying his approval or disapproval the said secretary may cause an inquiry to be made in the place as to the circumstances alleged in support of the expediency of the adoption of the Act, of the time and place of which inquiry fourteen days' public notice shall be given, and on the determination of such inquiry shall give or withhold, as he thinks just, his approval of the adoption of the Act.

The approval or disapproval of the said secretary of state shall be published by the said Secretary in the *Gazette*, and such publication shall be evidence of the fact of that approval or disapproval having been given.

Amendment of sections 17 & 18 of 21 & 22 Vict. c. 98.

Sect. 3. Petitions appealing against the resolution of adoption, and praying for exclusion from the operation of the "Local Government Act," under the seventeenth section of that Act (c), and appeals from owners and ratepayers who dispute the validity of the vote for adoption under the eighteenth section of the same Act (d), may be presented and had at any time before the expiration of six weeks from the date of any resolution adopting the Act.

As to abandonment of "Local Government Act" in certain places.

Sect. 4. When a resolution adopting the "Local Government Act" has been passed in a place in which the population, according to the then last census, is less than three thousand, that resolution may at any time be rescinded by a subsequent resolution passed in the same manner in which resolutions for the adoption of the Act are required to be passed, but the rescinding resolution shall not be of any effect unless it is approved by one of her Majesty's principal secretaries of state, and notice is published by him in the *London Gazette* of the passing of the resolution and of his approval thereof.

An appeal may be had from any such rescinding resolution in the same manner and subject to the same conditions, as nearly as may be, in and subject to which an appeal may be had against a resolution adopting the Act; and the provisions of the "Local Government Act" relating to an appeal against the adoption of the Act shall, with the requisite variations, apply to an appeal under this section.

The notice of the rescinding resolution shall not be published until the expiration of the time limited for an appeal, or until the deter-

(a) See the 11 & 12 Vict. c. 63, s. 24, *et seq.*, post, 435.  
20, *et seq.*, post, 437.  
(c) *Ante*, 431.  
(b) See the 21 & 22 Vict. c. 98, s. • (d) *Ante*, 431.

mination of the appeal, but upon the publication thereof the adoption of the "Local Government Act" shall be deemed to be avoided as from the date of that publication, and from the same date the "Local Government Act" shall cease to be in force within the district, and the district shall revert to the position in which it was before the adoption of the "Local Government Act;" so nevertheless that any contracts that may have been entered into by or on behalf of the local board of any such district may be enforced in the same manner in all respects as if the "Local Government Act" had continued in force in the district, and so far as may be necessary for the enforcement of such contracts, the local board and all their powers of levying money shall be deemed to be continued.

5. *Constitution of Local Boards, under the Act of 1858.*

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Sect. 5. In any district constituted under the "Local Government Act, 1858," where by that Act the local board is required to be elected by the ratepayers, and where the population according to the then last census is less than three thousand, if no election of a local board in pursuance of the said Act takes place within three months from the date of the constitution of the district, or if in any such district as last aforesaid the local board makes default in appointing fit and proper persons to the following offices or any of them, that is to say, to the office of surveyor, inspector of nuisances, clerk, and treasurer, within two months after the election of the local board, then upon the happening of either of the above events, the adoption of the "Local Government Act" in the said district shall be void, and the "Local Government Act, 1858," shall cease to be in force within the district, and the district shall revert to the same position as it was in before the adoption of the Act; so nevertheless that any contracts that may have been entered into by or on behalf of the local board of any such district may be enforced in the same manner in all respects as if the "Local Government Act" had continued in force in the district, and so far as may be necessary for the enforcement of such contracts the local board and all their powers of levying money shall be deemed to be continued.

Provision for avoidance of constitution of district.

Sect. 7. The power of adopting any part or parts of the "Local Government Act, 1858," given by that Act and the Acts amending the same, shall not be exhausted by one adoption, but may be exercised from time to time.

Amendment of sect. 15 of 21 & 22 Vict. c. 98.

#### 5. CONSTITUTION OF LOCAL BOARDS. UNDER THE ACT OF 1858.

By the 21 & 22 Vict. c. 98, sect. 24, the duty of carrying into execution this Act shall be vested in a local board; and such local board shall be,—

Local boards, how constituted

1. In corporate boroughs, the mayor, aldermen, and burgesses acting by the council:
2. In other places under the jurisdiction of such a board of improvement commissioners as hereinbefore mentioned, the board of commissioners:
3. In other places, such number of elective members as may be determined by a resolution of the owners and ratepayers, passed in manner in which resolutions for the adoption of this Act are hereinbefore directed to be passed (a), at any meeting held for the purpose of adopting this Act, or at any meeting to be summoned by the summoning officer for the purpose of this section; but no person shall be qualified to be a member of such local board unless he is at the time of his election, and so long as he shall continue in office by virtue of such election, resident within the district for which or

(a) See sect. 13, *ante*, 429.



5. *Constitution of Local Boards, under the Act of 1858.*

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for part of which he is elected, or within seven miles thereof, and is seised or possessed of real or personal estate, or both, to the value of not less than five hundred pounds in districts containing less than twenty thousand inhabitants, or to the value of not less than one thousand pounds in districts containing twenty thousand or more inhabitants, or rated to the relief of the poor of such district, or of some parish within the same, upon an annual value of not less than fifteen pounds in districts containing less than twenty thousand inhabitants, or on an annual value of not less than thirty pounds in districts containing twenty thousand or more inhabitants; provided that if two or more persons be jointly seised or possessed of real or personal estate or both, of such value or amount as would, if equally divided between them, qualify each to be elected, or if two or more persons be jointly rated in respect of any property which, if equally divided between them, would qualify each to be so elected, each of the persons so jointly seised, possessed, or rated may be elected, but the property shall not at the same time qualify the owner and the occupier thereof (a) :

District may be divided into wards, with sanction of Secretary of State.

4. Local boards of health in districts where the "Public Health Act, 1848," is applied, may, with the sanction of one of her Majesty's principal secretaries of state, divide their district into separate wards, and declare what proportion of the members of the local board is to be elected by each ward. In districts where this Act is adopted, the owners and ratepayers may by resolution direct a petition to one of her Majesty's principal secretaries of state to divide the district into wards, for the purpose of election.

As to casual vacancies.

7. Any casual vacancy occurring by death, resignation, disqualification, or otherwise in the local board may be filled up within one month by the local board out of qualified persons, but the member so chosen shall retain his office so long only as the vacating member would have retained the same if no vacancy had occurred.

As to first meeting of local board.

8. In the case of districts not consisting of boroughs or towns under the jurisdiction of such improvement commissioners as aforesaid, the first meeting shall be held on such day, not more than ten days after the election of the local board, and at such place, as the returning officer may, by notice sent by post or delivered to each member of such board, appoint.

Disqualification of members of local boards.

Sect. 25. Notwithstanding anything contained in the "Public Health Act, 1848,"—

1. No member of a local board shall vacate his office by reason of his being interested in any sale or lease of any lands, or any loan of money to the local board :

2. Nor by absenting himself from meetings of the board, if he be not absent from the district for more than six months at one and the same time, unless in case of illness, nor by reason of his being interested in any contract with the local board as a shareholder in any company established under the provisions of the Joint Stock Companies Acts or any of them, with or without a limited liability: provided no member of a local board, being a shareholder, shall vote on any question in which the company is interested :

3. It shall be lawful for one of her Majesty's principal secretaries of state to dispense in any case with the prohibition contained in the nineteenth section of the "Public Health Act, 1848," by which no member of a local board, being a shareholder in any company or concern established for the supply of water, or for the

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(a) See the 11 & 12 Vict. c. 63, s. 16, *ante*, 426, as to the qualification under that Act.

carrying on of any other works of a like public nature, is entitled to vote upon any question in which such company or concern is interested.

## 6. *Election of the Local Board.*

Sect. 26. So much of the thirty-third section of the "Public Health Act, 1848," as requires that a day shall be specified in any charter of incorporation by which the district of a local board becomes a corporate borough, from and after which the powers, authorities, duties, property, and liabilities of the local board shall be vested in the mayor, aldermen, and burgesses of the borough by their council, shall be repealed; and all transfers of powers, authorities, duties, property, and liabilities which have been or shall hereafter be made by any local board of health to the mayor, aldermen, and burgesses of any corporate borough by their council, the district of such board and such corporate borough being identical, shall be valid and effectual to all intents and purposes, though no day for such transfer shall have been named in the charter incorporating such borough.

Powers of local board to vest in town council when a district becomes a corporate borough.

This section does not render valid a transfer by a local board to the council of a corporate borough, where the district of the board and of the corporate borough are not identical. (*Swinford v. Keble*, 7 B. & S. 573.)

Sect. 27. Adjoining districts may unite together upon such terms and subject to such conditions as the respective local boards of such districts may, with the sanction of one of her Majesty's principal secretaries of state, determine.

Power to adjoining districts to unite, with sanction of Secretary of State.

Sect. 28. Every local board may, with the consent of the local board of any adjoining district, or with the consent of any adjoining place maintaining its own poor, do and execute in such adjoining district or place all or any of such works and things as the local board may do and execute within their own district, and upon such terms as to payment or otherwise as may be agreed upon between such local board and the local board of the adjoining district, or the local authority under the "Nuisance Removal Act, 1855" (a), in and for such adjoining place; and any sums agreed to be paid by the local board of the adjoining district in pursuance of this section shall be payable out of the rates leviable under the "Public Health Act, 1848," and this Act; and any sums agreed to be paid by such local authority shall be payable out of the same rates as the expenses of executing the said "Nuisance Removal Act;" and the consent of any such place to any work or thing proposed to be done under this section shall be signified in the same manner in which the consent of a place to the adoption of this Act is hereinbefore (b) required to be signified; and where the expenses of any such work or thing would, if the same had been executed in a district under the powers of this Act, have been recoverable from owners or occupiers, such expenses shall be recoverable by the local board or local authority of the district or place respectively from such owners or occupiers.

Power to local board to execute works in adjoining places.

By the 29 & 30 Vict. c. 90, s. 46, the following bodies, that is to say, local boards, sewer authorities, and nuisance authorities, if not already incorporated, shall respectively be bodies corporate, designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring power on such bodies respectively in their several characters of local board, sewer authorities, or nuisance authorities.

## 6. ELECTION OF THE LOCAL BOARD.

By the 11 & 12 Vict. c. 63, sect. 20, at every such election as afore-

Qualification of elector, and scale of voting.

(a) See the Act, *post*, tit. "Nuisance." (b) See sect. 13, *ante*, 429.

6. *Election  
of the  
Local Board.*

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Definition of the  
words "owner"  
and "owners"  
as applied to this  
Act.

said, the ratepayers in respect of property in the district or part of a district for which the election is held, and the owners of such property, shall be entitled to vote according to the scale following (that is to say); if the property in respect of which the person is entitled to vote be rated upon a rateable value of less than fifty pounds, he shall have one vote; if such rateable value amount to fifty pounds and be less than one hundred pounds, he shall have two votes; if it amount to one hundred pounds and be less than one hundred and fifty pounds, he shall have three votes; if it amount to one hundred and fifty pounds and be less than two hundred pounds, he shall have four votes; if it amount to two hundred pounds and be less than two hundred and fifty pounds, he shall have five votes; and if it amount to or exceed two hundred and fifty pounds, he shall have six votes; and any person who is owner and also *bonâ fide* occupier of the same property shall be entitled to vote both in respect of such ownership and of such occupation; and the votes shall be given, taken, collected, and returned according to the directions hereinafter contained; and the majority of the votes actually collected and returned shall be binding on the district or part of a district for which the election is had; and whosoever shall not vote or shall not comply with such directions shall be omitted in the calculation of votes, and be deemed to have had no vote: Provided always, that the word "owner" and "owners," when used in this Act in relation to the right of voting at any election under this Act, shall respectively be construed to mean any person or persons for the time being in the actual occupation of any kind of property rateable to the relief of the poor, and not let to him or them at a rack rent, or any person or persons receiving, either on his or their own account, or as mortgagee or mortgagees, or other incumbrancer or incumbrancers, in possession, the rack rent of any such property; and no person shall be deemed a ratepayer or be entitled to vote as such at any such election unless he shall have been rated to the relief of the poor in the district or part of a district for which he claims to vote for the space of one whole year immediately preceding the day of tendering his vote, and shall have also paid all rates made upon him for the relief of the poor in such district or part of a district for the period of one whole year, and shall have also paid all such rates, and all rates due from him under this Act, before that day, in such district or part of a district, except rates which shall have been made or become due within the six months immediately preceding: Provided also, that in case of property belonging to a corporation aggregate, or to a joint stock or other company, or to any body of proprietors or undertakers, such corporation, company, body of proprietors or undertakers respectively, shall be deemed to be one owner for the purpose of voting under this Act, and shall vote by proxy appointed in writing under the common seal (in case of a corporation) or (in any other case) under the hands of three directors or other persons in the direction or management of the company or concern; and no member of such corporation, nor any proprietor or person interested in such company or concern, shall be entitled to vote individually as owner in respect of such property; and no owner whosoever shall be entitled to vote as such, unless, fourteen days at least previously to the day of tendering his vote, he shall have delivered to the clerk, or (in case of the first election) to such person within the district in which the qualification to vote is situate as shall be directed by such Order in Council, or provisional order (as the case may require), a statement in writing of his name and address, and containing a description of the nature of his interest or estate in the property giving the qualification, and a statement of the amount of all rent-service (if any) which he may receive or pay in respect thereof, and of the persons from whom he may receive or to whom he may pay the same; and no such corporation aggregate, joint stock or other company, body of proprietors or undertakers, shall be entitled to vote unless such statement contain the name and address of the proxy appointed, and a true copy of the appointment of such proxy.

Sect. 21. At every election by owners of property and ratepayers under this Act the chairman of the local board of health, or, in case of the first election, such person as shall be appointed by order of her Majesty in Council, or by provisional order of the general board of health (as the case may require), shall have the powers and perform the duties vested in or imposed upon the said chairman by this Act in relation to any such election, and shall perform all other duties which it may be requisite for him to perform in conducting and completing elections under this Act; and in case the office of chairman shall be vacant at the time when any such power or duty must be executed or performed, or in case the chairman or person appointed as last aforesaid, from illness or other sufficient cause, shall be unable to exercise or discharge such powers or duties, or shall be absent, or shall refuse to act, some other person who shall be appointed (in case of the first election) by such Order in Council or provisional order, or (in any other case) by the local board of health, shall exercise or perform such of the said powers and duties as then remain to be exercised or performed; and the said local board, or (in case of the first election) the person appointed by such Order in council or provisional order, shall, before or during the election, appoint a competent number of persons to assist and attend upon the chairman or the person so appointed (as the case may require), in conducting and completing the same.

An election held in the absence of the chairman is absolutely void, although conducted by the other officers in the usual way, and although the result would not have been different if the chairman had been present. (*Reg. v. Backhouse, Law Rep. 2, Q. B. 16; 36 L. J., Q. B. 7.*)

Sect. 22. The clerk of the board of guardians of any union, and the overseers or other officers of every parish wholly or in part within the parts for which any such election shall be held, and having the custody of any books or papers relating to the election of guardians of the poor, or the poor-rate books relating to any such parish, shall permit the same to be inspected, and copies or extracts to be taken therefrom by the said chairman, or (in case of the first election) by any person appointed by such order in council or provisional order as aforesaid; and the said chairman may, if he shall see fit, cause to be made an alphabetical list of the persons entitled to vote at the election.

Sect. 23. The said chairman shall, before every such election, prepare, sign, and publish a notice, which shall contain the particulars following, that is to say,—the number and qualification of the persons to be elected, the persons by whom and the places where the nomination papers hereinafter mentioned are to be received, and the last day on which they are to be sent, the mode of voting in case of a contest, and the days on which the voting-papers will be delivered and collected, and the time and place for the examination and casting up of the votes; and he shall also cause such notice to be affixed on such places in the parts for which the election is to be held as are ordinarily made use of for affixing thereon notices of parochial business: Provided always, that whenever the day appointed for the performance of any act in relation to any such election shall be on a Sunday, Christmas Day, or Good Friday, or any day appointed for public fast or thanksgiving, such act shall be performed on the day next following.

Sect. 24. Any person entitled to vote may nominate for the office of member of the local board of health himself (if qualified to be elected), or any other person or persons so qualified (not exceeding the number of persons to be elected); and every such nomination shall be in writing, and shall state the names, residence, calling, or quality of the persons nominated, and shall be signed by the party nominating, and be sent to the said chairman, and if the number of persons nominated shall be the same or less than the number of persons to be elected, such persons (if duly qualified) shall be deemed to be elected, and shall be certified accordingly by the said

## 6. Election of the Local Board.

Elections, by whom to be conducted.

Production of parochial books, etc., for purposes of election.

List of voters, etc., to be made if necessary.

Publication of notices previously to election.

Nomination and election of candidates.

6. *Election  
of the  
Local Board.*

chairman under his hand; but if the number so nominated exceed the number to be elected, the said chairman shall cause voting-papers, in the form contained in the schedule (A.) to this Act annexed, to be prepared and filled up, and shall insert therein the names of all the persons nominated, in the order in which the nomination papers were received, but it shall not be necessary to insert more than once the name of any person nominated; and the said chairman shall, three days before the day of election, cause one of such voting-papers to be delivered by the persons appointed for that purpose to the address in the parts for which the election is to be held of each owner and proxy, and at the residence of each ratepayer entitled to vote therein: Provided always, that if any person put in nomination shall tender to the officer conducting the election his refusal in writing to serve as a member of the local board of health, and if in consequence of such refusal the number of persons nominated shall be the same as or less than the number of persons to be elected, all or so many of the remaining candidates as shall be duly qualified shall be deemed to be elected, and shall be certified as such by the chairman under his hand.

An omission to fill up the blanks left in the voting-papers for the number of votes as owner and as ratepayer respectively, does not render the election illegal, but merely subjects the chairman to a penalty. (*Reg. v. Lofthouse, Law Rep. 1 Q. B. 433; 35 L. J., Q. B. 145.*)

In order to entitle a person to vote as owner, he must give the fourteen days' notice required by sect. 20, *ante*, 437.

Mode of voting.

Sect. 25. Each voter shall write his initials in the voting-paper delivered to him against the name or names of the person or persons (not exceeding the number of persons to be elected) for whom he intends to vote, and shall sign such voting-paper: and when any person votes as a proxy he shall in like manner write his own initials, and sign his own name, and state also in writing the name of the corporation, company, or body of proprietors or undertakers for which he is proxy: Provided always, that if any voter cannot write, he shall affix his mark at the foot of the voting-paper in the presence of a witness, who shall attest and write the name of the voter against the same, as well as the initials of such voter against the name of every candidate for whom the voter intends to vote.

Regulations as to  
collection of  
voting-papers.

Sect. 26. The said chairman shall cause the voting-papers to be collected on the day of election by the persons appointed or employed for the purpose, in such manner as he shall direct; but no voting-paper shall be received or admitted unless the same have been delivered at the address or residence as aforesaid of the voter within the parts for which the election is had, nor unless the same be collected by the persons appointed or employed for that purpose, except as next hereinafter provided: Provided always, that if any person qualified to vote shall not have received a voting-paper as aforesaid, he shall, on application before that day to the said chairman, be entitled to receive a voting-paper from him, and to fill up the same in his presence, and then and there to deliver the same to him: Provided also, that in case any voting-paper duly delivered shall not have been collected, through the default of the said chairman, or the persons appointed or employed to receive the same, the voter in person may deliver the same to the said chairman before twelve o'clock at noon on the day, or the first day (as the case may be), appointed for the examination and casting-up of the votes.

The voting paper must have been delivered at the address of an owner or proxy, and at the residence of a ratepayer. (See sect. 24, *ante*, 439.)

Regulations as to  
examination of  
votes and elec-  
tions of local  
boards.

Sect. 27. The chairman shall, on the day immediately following the day of the election, and on as many days immediately succeeding as may be necessary, attend at the office of the local board of health, and ascer-

tain the validity of the votes, by an examination of the rate-books and such other books and documents as he may think necessary, and by examining such persons as he may see fit; and he shall cast up such of the votes as he shall find to be valid, and to have been duly given, collected, or received, and ascertain the number of such votes for each candidate; and the candidates to the number to be elected who, being duly qualified, shall have obtained the greatest number of votes, shall be deemed to be elected, and shall be certified as such by the said chairman under his hand; (a) and to each person so elected the said chairman shall send or deliver notice of such election; and the said chairman shall also cause to be made a list containing the names of the candidates, together with (in case of a contest) the number of votes given for each, and the names of the persons elected, and shall sign and certify the same, and shall deliver such list, together with the nomination and voting-paper which he shall have received, to the local board of health at their first or next meeting (as the case may be), who shall cause the same to be deposited in their office, and the same shall, during office hours thereat, be kept open to public inspection, together with all other documents relating to the election, for six months after the election shall have taken place, without fee or reward; and the said chairman shall cause such list to be printed, and copies thereof to be affixed at the usual places for affixing notices of parochial business within the parts for which the election shall have been made.

Sect. 28. If the said chairman or other person charged with taking, collecting, or returning the votes at any such election as aforesaid, shall neglect or refuse to comply with any of the provisions of this Act in that behalf, he shall be liable for every such offence to a penalty not exceeding fifty pounds; and any person employed for the purposes of any such election, by or under the said chairman or other person charged as aforesaid who shall be guilty of any such neglect or refusal, shall be liable for every such offence to a penalty not exceeding five pounds.

Sect. 29. All proceedings of the local board of health, and of any person acting as member or under the authority thereof, shall, notwithstanding any defect in the selection or election of such board, or any member thereof, be as valid and effectual as if no such defect had ever existed.

Sect. 30. The necessary expenses attendant upon any such election as aforesaid, and such reasonable remuneration to returning officers and other persons for services performed or expenses incurred by them in relation thereto as shall from time to time be allowed by the local board of health in that behalf, shall be paid out of the general district rates to be levied under this Act. (b)

The Court of Queen's Bench will not interfere with the decision of the board as to the remuneration to be allowed under this section. (*Ex parte Metcalfe*, 6 *El. & Bl.* 287.)

Sect. 31. Nothing hereinbefore contained with respect to the appointment, selection, or election of any local board of health, or member thereof, shall apply to the City of Oxford, or the parts within the jurisdiction of the commissioners for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and the adjoining parish of St. Clement (which commissioners are hereinafter called the Oxford commissioners), or to the borough of Cambridge, or the parts within the jurisdiction of the commissioners acting under an Act of the thirty-fourth year of the reign

## 6. Election of the Local Board.

Notices to be sent to persons elected.

List of persons elected, etc., to be transmitted to local boards, who shall deposit the same, which shall be open to inspection.

Penalty upon persons conducting elections neglecting to comply with provisions of this Act.

Defects in election, etc., not to invalidate proceedings.

Expenses of elections to be defrayed out of general district rates.

Local board of health in Oxford and Cambridge to consist of Oxford and Cambridge Improvement Commissioners.

52 Geo. 3, c. 72.  
34 Geo. 3, c. 104

(a) See *Reg. v. Backhouse*, ante, 439.

(b) See, as to the general district rate, sect. 87, post, 478.

7. *Meetings  
of Local  
Boards.*

of King George the Third, for amending and enlarging the powers of a former Act of the same reign, for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstructions and annoyances, and for widening the streets, lanes, and other passages within that town (which commissioners are hereinafter called the Cambridge commissioners); and if the city of Oxford, or the parts within the first-mentioned jurisdiction, become a district under this Act, the same shall be called the Oxford district, and the said Oxford commissioners for the time being shall, within and for such district, be the local board of health under this Act; and if the borough of Cambridge, or the parts comprised within the jurisdiction secondly above mentioned, become a district under this Act, the same shall be called the Cambridge district, and the said Cambridge commissioners for the time being shall, within and for such district, be the local board of health under this Act.

With respect to the execution of the Act by commissioners under local Acts in other cases.

Sect. 32. Whenever, by any such provisional order as aforesaid, the commissioners or trustees acting under any local Act of Parliament are constituted the local board of health under this Act, such commissioners or trustees shall, within and for the district to which such provisional order applies, exercise and execute the powers, authorities, and duties vested in or imposed on the local board of health by this Act, and so much of this Act as relates to the appointment, election, or selection of local boards of health shall not apply to such district.

Local board of health, in case of a district afterwards becoming a corporate borough.

Sect. 33. If, after the application of this Act to any district, the parts constituting the district shall afterwards become or be entirely comprised within the limits of a corporate borough, the mayor, aldermen, and burgesses of such borough shall, from and after such day as shall have been specified in the charter of incorporation in this behalf, be, by the council of the borough, the local board of health within and for such district; and in case any day shall have been so specified, but not otherwise, the powers, authorities, duties, property, and liabilities of any other persons as such local board shall, from and after that day, absolutely cease and determine, and be vested in such mayor, aldermen, and burgesses, as fully to all intents and purposes as if they had always been the local board of health from the time when the district was originally constituted.

The 21 & 22 Vict. c. 98, s. 26, *ante*, 437, repeals so much of this section as requires that a day shall be specified in any charter of incorporation by which the district of a local board becomes a corporate borough.

Course of proceeding in event of failure to elect a local board.

By the 21 & 22 Vict. c. 98, s. 11, in the case of any failure to elect a local board, or of any lapse of a local board as aforesaid, it shall be lawful for the owners and ratepayers of the district, by resolution, as hereinafter provided for the adoption of this Act, (a) to proceed to election of a new local board in the manner provided by this Act, with the same qualification of members from property or rating as the lapsed local board, and the result of such election shall be signified to one of her Majesty's principal secretaries of state by the person conducting it, in the same manner as is hereinafter directed with regard to the adoption of this Act; and all the rights and liabilities of the former local board shall attach to the new local board as if there had been no lapse before the election thereof, and from the date of such election all powers of any receiver to make rates under the preceding section shall determine.

7. MEETINGS, ETC., OF LOCAL BOARDS.

Meetings of local boards of non-corporate dis-

By the 11 & 12 Vict. c. 63, s. 34, the local board of health of every non-corporate district shall hold an annual meeting and other meetings

(a) See sect. 24, *ante*, 435.

for the transaction of business under this Act once at least in each month, and at such other times as may be necessary for properly executing its powers and duties under this Act, and shall from time to time make bye-laws with respect to the summoning, notice, place, management, and adjournment of such meetings, and generally with respect to the transaction and management of business by such board under this Act: Provided always, that no business shall be transacted at any such meeting unless at least one-third of the full number of members be present thereat, except in either of the districts to be called the Oxford or Cambridge districts, in which cases business may be transacted if at least seven members be present; and all questions shall be decided by a majority of votes; and the names of the members present, as well as of those voting upon each question, shall be recorded; and the said local board shall at their first meeting under this Act, and afterwards from time to time at their annual meeting, appoint one of their number to be chairman for one year at all meetings at which he is present; and in case the chairman so appointed be absent from any meeting at the time appointed for holding the same, the members present shall appoint one of their number to act as chairman thereat; and in case the chairman appointed as first aforesaid die, resign, or become incapable of acting, another member shall be appointed to be chairman for the period during which the person so dying, resigning, or becoming incapable would have been entitled to continue in office, and no longer; and the chairman at any meeting shall have a second or casting vote in case of an equality of votes; but nothing herein contained with respect to the appointment of chairman shall apply to any district to be called the Oxford or Cambridge district, and in such districts the Oxford or Cambridge commissioners respectively shall appoint a chairman as heretofore.

See, as to the making of bye-laws, sects. 115, 116, *post*, subsection 26; and as to the Oxford and Cambridge districts, sect. 31, *ante*, 441.

Sect. 35. The local board of health shall from time to time provide and maintain such offices as may be necessary for transacting their business and that of their officers and servants under this Act, and (in the case of a non-corporate district) shall cause to be made a seal for the use of such board in the execution of this Act; and documents or copies of documents purporting to proceed from the said local board, and to be signed by any five or more members thereof, and to be sealed or stamped with such seals, or (in the case of a corporate district) to be sealed with the common seal, shall be received as *prima facie* evidence in all courts and places whatsoever.

## 8. Local Officers.

districts, and regulation of business, etc.

Local boards to provide offices for transacting business.

Sect. 36. The local board of health may from time to time appoint out of their own number so many persons as they may think fit, for any purposes which, in the opinion of the said local board, would be better regulated and managed by means of a committee: Provided always, that the acts of every such committee shall be submitted to the said local board for their approval.

Committees may be appointed.

## 8. LOCAL OFFICERS.

By the 11 & 12 Vict. c. 63, s. 37, the local board of health shall from time to time appoint fit and proper persons to be surveyor, inspector of nuisances, clerk, and treasurer for the purposes of this Act, and shall appoint or employ such collectors and other officers and servants as may be necessary and proper for the efficient execution of this Act, and shall make bye-laws for regulating the duties and conduct of the several officers and servants so appointed or employed; and the said local board may pay, out of the general district rates to be levied under this Act, to such officers and servants, such reasonable salaries, wages, or allowances as the said local board may think proper; and every such officer and

Power to local boards to appoint surveyor, inspector of nuisances, clerk, treasurer, etc.



### 8. Local Officers.

Same person may be surveyor and inspector of nuisances, but not clerk and treasurer.

servant shall be removable by the said local board at their pleasure, subject, nevertheless, in the case of the removal of the surveyor, to the approval of the general board of health: Provided always, that the same person may be both surveyor and inspector of nuisances; but neither the person holding the office of treasurer nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of clerk; and neither the person holding the office of clerk, nor his partner, nor any person in the service or employ of them or either of them, shall hold, be eligible to, or shall in any manner assist or officiate in the office of treasurer; and whosoever offends in any of the cases enumerated in this proviso shall forfeit and pay the sum of one hundred pounds, which may be recovered by any person, with full costs of suit, by action of debt.

See as to the making of bye-laws, ss. 115, 116, *post*, subsection 26, and as to the general district rate, s. 87, *post*, 478.

The Court of Queen's Bench will not interfere with the decision of the board as to the remuneration to be allowed under this section. (*Ex parte Metcalfe*, 6 *El. & Bl.* 287.)

Penalty upon officers, etc. interested in contracts or taking fees improperly.

Sect. 38. No officer or servant appointed or employed by or under the local board of health shall in anywise be concerned or interested in any bargain or contract made with such board for the purposes of this Act; and if any such officer or servant be so concerned or interested, or shall, under colour of his office or employment, exact, take, or accept any fee or reward whatsoever, other than his proper salary, wages, and allowances, he shall be incapable of afterwards holding or continuing in any office or employment under this Act, and shall forfeit and pay the sum of fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt.

Officers, etc. intrusted with money to give security, and to account.

Sect. 39. Before any such officer or servant enters upon any office or employment under this Act by reason whereof he will or may be intrusted with the custody or control of money, the local board of health by whom he is appointed shall require and take from him sufficient security for the faithful execution of such office or employment, and for duly accounting for all moneys which may be intrusted to him by reason thereof; and every such officer or servant employed in the collection of rates under the authority of this Act shall, within seven days after he shall have received any moneys on account of such rates, pay over the same to the treasurer, and shall, as and when the said local board may direct, deliver a list, signed by him, containing the names of all persons who have neglected or refused to pay any such rate, and the sums respectively due from them; and every officer and servant appointed or employed by or acting under the said local board shall respectively, when and in such manner as shall be required by such board, make out and deliver to them a true and perfect account in writing of all moneys received by him for the purposes of this Act, and stating how, and to whom, and for what purpose such moneys have been disposed of, and shall, together with such account, deliver the vouchers or receipts for all payments made by him, and pay over to the treasurer all moneys owing by him upon the balance of accounts; and if any such officer or servant fail to render such account or to produce and deliver up such of the said vouchers and receipts as may be in his possession or power, or to pay over any such moneys as aforesaid, or if for the space of five days after being thereunto required he fail to deliver up to the said local board all papers and writings, property, effects, matters, and things, in his possession or power, relating to the execution of this Act, or belonging to such board, then and in every such case a justice shall, on complaint being made to him in that behalf, summon the party charged to appear and answer the complaint before two justices at a time and place to be speci-

Summary proceedings to be taken in case of failing to account, etc.

fied in the summons; and upon the appearance of the party charged, or upon proof that the summons was personally served upon him, or left at his last known place of abode or business, and if it appear to the last-mentioned justices that he has failed to render any such accounts, or to produce and deliver up any such vouchers or receipts, or any such papers, writings, property, effects, matters, or things as aforesaid, and that he still fails or refuses so to do, they may, by warrant, under their hands and seals, commit the offender to gaol, there to remain, without bail, until he shall have rendered such accounts, and produced and delivered up all such vouchers, receipts, books, papers, writings, property, effects, matters, and things in respect of which the charge was made; and if it appear that the party charged has failed to pay over any such moneys as aforesaid, and that he still fails or refuses so to do, the last-mentioned justices may, by a like warrant, cause the same to be levied by distress and sale of his goods and chattels, and in default of any sufficient distress commit him to gaol, there to remain, without bail, for a period of three months, unless such moneys be sooner paid: Provided always, that if the complainant, by deposition on oath, show to the satisfaction of any justice that there is probable cause for believing that the party charged intends to abscond, such justice may without previous summons, by warrant under his hand and seal, cause him to be forthwith apprehended; and in such case the said party shall, within twenty-four hours after apprehension, be brought before the same or some other justice, who may order that he be discharged from custody, if such justice think that there is no sufficient ground for detention, or that he be further detained until he be brought before two justices at a time and place to be named in the order, unless bail to the satisfaction of the justice be given for the appearance of the party before such two justices: Provided also, that no such proceeding shall be construed to relieve or discharge any surety of the offender from any liability whatsoever.

9. *District Maps, &c.*

Sect. 40. The local board of health may from time to time, if they shall think fit, appoint a fit and proper person, being a legally qualified medical practitioner or member of the medical profession, to be and be called the officer of health, who shall be removable by the said local board, and shall perform such duties as the said general board shall direct; and the same person may be officer of health for two or more districts; and the local board or boards of health of the district or districts respectively for which any such officer is appointed may pay to him, out of the general district rates to be levied under this Act, such remuneration by way of annual salary or otherwise as the said local board or boards may by order in writing determine and appoint, and (in case of a joint appointment for two or more districts) in such proportions as the said general board may by order in writing determine and appoint: Provided always, that the appointment and removal of the officer of health shall be subject to the approval of the said general board,

Power to appoint an officer of health.

See as to the general district rate, s. 87, *post*, 478.

9. DISTRICT MAPS, *etc.*

By the 11 & 12 Vict. c. 63, s. 41, the said local board of health may, if they shall think fit, cause to be prepared, or to procure, a map exhibiting a system of sewerage for effectually draining their district for the purposes of this Act, upon a scale to be prescribed by the general board of health; and every such map shall be kept at the office of the said local board, and shall at all reasonable times be open to the inspection of the ratepayers of the district to which it applies.

Map exhibiting system of sewerage.

Sect. 42. The expense of surveys, maps, or plans made, prepared, or procured by the local board of health for the purposes of this Act

Expense of surveys, *etc.*

10. *Sewers.* shall be defrayed out of the general district rates to be levied under this Act.

See, as to the general district rate, s. 87, *post*, 478.

#### 10. SEWERS.

Sewers, etc.  
vested in local  
board.

By the 11 & 12 Vict. c. 63, s. 43, all sewers, whether existing at the time when this Act is applied or made at any time thereafter, (except sewers made by any person or persons for his or their own profit, or for the profit of proprietors or shareholders, and except sewers made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land, and sewers under the authority of any commissioners of sewers appointed by the Crown,) together with all buildings, works, materials, and things belonging or appertaining thereto, shall vest in, belong to, and be entirely under the management and control of the local board of health.

A natural stream, supplied by natural and artificial drainage of cultivated soil belonging to private individuals, was cleared out and partially widened and deepened by commissioners acting under a private enclosure Act, powers being given to them to do so at the expense of the proprietors. In its passage to the river into which it ultimately flowed, it passed through a town and received the drainage of two or three inhabited houses. The Court of Queen's Bench held that, even if it were a sewer, it came within these exceptions and was not vested in the local board, and that they were not liable to cleanse and repair it; and, *semble*, it was not a sewer. (*Reg. v. Godmanchester Local Board*, 34 *L. J. Q. B.* 13; affirmed, on appeal, *Law Rep.* 1 *Q. B.* 328; 35 *L. J. Q. B.* 125.)

Power to purchase, etc. certain  
sewers.

Sect. 44. The local board of health may, if they shall think fit, purchase the rights, privileges, powers, and authorities vested in any person for making sewers, or contract for the use of any sewers within their district, or purchase any such sewers, with or without the buildings, works, materials, and things belonging or appertaining thereto; and any person to whom any such rights, privileges, powers, authorities, sewers, buildings, works, materials, or things belong may sell and dispose of the same to or otherwise contract with the said local board; and in case of any such sale, the purchase money shall be settled and applied to the same uses and trusts to which the property purchased may have been subject at the time of such sale, and the property purchased shall vest in and belong to the local board of health purchasing the same, anything to the contrary notwithstanding: Provided always, that, notwithstanding any such purchase, any person who previously thereto may have acquired perpetual right to use any sewer so purchased shall be entitled to use the same, or any other sewer substituted in lieu thereof, in as full and ample a manner as he would or might have done if such purchase had not been made.

Making, alteration, and discontinuance of  
sewers vested in  
local board.

Sect. 45. The local board of health shall from time to time repair the sewers vested in them by this Act, and shall cause to be made such sewers as may be necessary for effectually draining their district for the purposes of this Act; and the said local board may carry any such sewers through, across, or under any turnpike-road, or any street or place laid out as or intended for a street, or under any cellar or vault which may be under the pavement or carriage-way of any street, and, after reasonable notice in writing in that behalf (if upon the report of the surveyor it should appear to be necessary), into, through, or under any lands whatsoever; and the said local board may from time to time enlarge, lessen, alter, arch over, or otherwise improve all or any of the sewers vested in them by this Act, and discontinue, close up, or destroy such of them as they may deem to have become unnecessary: Provided

always, that the discontinuance, closing up, or destruction of any sewer shall be so done as not to create a nuisance; and if by reason thereof any person is deprived of the lawful use of any sewer, the said local board shall provide some other sewer as effectual for his use as the one of which he is so deprived.

See, as to the power to make a deduction from the rate in respect of premises already sufficiently drained, the 21 & 22 Vict. c. 98, s. 29, *post*, 448. See also the 29 & 30 Vict. c. 90, s. 49, *post*, 450, as to the mode of proceeding where the board has made default in providing sufficient sewers.

By the 24 & 25 Vict. c. 61, ss. 4-7, *post*, 448, 449, the powers given by this section may, in certain cases, be exercised out of the district. See *Haywood v. Lowndes* (4 *Drew*. 454; 28 *L. J. Chanc.* 400) for the law before it was altered by the later enactment.

A notice which specifies the object and place of entry is reasonable; and it is not necessary that it should be accompanied by a map. (*Cleckheaton Industrial Self-Help Society v. Jackson*, 14 *W. R.* 950.)

Sect. 46. The local board of health shall cause the sewers vested in them by this Act to be constructed, covered, and kept so as not to be a nuisance or injurious to health, and to be properly cleared, cleansed, and emptied; and for the purpose of clearing, cleansing, and emptying the same they may construct and place, either above or under ground, such reservoirs, sluices, engines, and other works as may be necessary, and may cause all or any of such sewers to communicate with and be emptied into such places as may be fit and necessary, or to cause the sewage and refuse therefrom to be collected for sale for any purpose whatsoever, but so as not to create a nuisance.

As to cleansing and emptying sewers, etc., by local board.

A local board has no power under this or any other section of the Act to enter upon land without the consent of the owner for the purpose of making reservoirs and deposit-beds for retaining the sewage; and a Court of Equity will restrain such a proceeding by injunction. (*Sutton v. Mayor, etc., of Norwich*, 27 *L. J. Chanc.* 739.)

By the 21 & 22 Vict. c. 98, s. 30, *post*, 448, the powers given by this section may, under certain circumstances, also be exercised out of the district, and the local board may also contract for the sale or distribution of sewage over any land, and may contract for, purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage. See also sect. 31 of the same Act, *post*, 448, as to provision for obtaining an order of justices for cleansing foul and offensive watercourses or open ditches lying near to or forming the boundaries of districts.

Sect. 47. It shall not be lawful to cause any sewer or drain to communicate with or to be emptied into any sewer of the local board of health, nor to cause any building to be newly erected over any such last-mentioned sewer, nor to cause any vault, arch, or cellar to be newly built or constructed under the carriage-way of any street, without the written consent of the said local board first had and obtained; and whosoever offends against this enactment shall forfeit to the said local board the sum of five pounds, and a further penalty of forty shillings for every day during which the offence is continued after notice in writing from them in this behalf; and if any sewer, drain, building, vault, arch, or cellar be made, erected, or constructed contrary to this enactment, the said local board may cause the same to be altered, pulled down, or otherwise dealt with as they may think fit, and the expenses incurred by them in so doing shall be repaid to them by the offender, and be recoverable from him in the summary manner hereinafter provided.

Penalty for making unauthorized sewers, and building over sewers and under streets.

Sect. 48. Any owner or occupier of premises adjoining or near to, but beyond the limits of any district, may cause any sewer or drain of or from such premises to communicate with any sewer of the local board of health, upon such terms and conditions as shall be agreed upon between

Use of sewers by persons beyond district.

10. *Sewers.* such owner and occupier and such local board, or, in case of dispute, as shall be settled by arbitration in the manner provided by this Act.

See also the 24 & 25 Vict. c. 61, s. 8, *post*, 449.

Power to make deduction from rate in respect of premises sufficiently drained.

By the 21 & 22 Vict. c. 98, s. 29, if it appear to a local board that any premises were sufficiently drained before the construction of any new sewer they may lay down, it shall be lawful to deduct from the amount of rates otherwise chargeable in respect of such premises such a sum and for such time as the local board may, under all the circumstances of the case, deem to be just.

By the 29 & 30 Vict. c. 90, s. 43, *post*, subsection 27, local boards under this Act may adopt the Baths and Washhouses Acts.

Powers for disposing of sewage.

Sect. 30. Local boards may,—

- (1.) Exercise the powers given by the forty-sixth section of the "Public Health Act, 1848," also without their district, if necessary for the purpose of outfall and distribution of sewage, upon making due compensation, to be settled in the manner provided in the one hundred and forty-fourth section of the "Public Health Act, 1848."
- (2.) Contract with any company or person for the sale of sewage, or for the distribution of it over any land.
- (3.) Contract for, purchase, or take on lease any lands, buildings, engines, materials, or apparatus for the purpose of receiving, storing, disinfecting, or distributing sewage.

Provided always, that these things shall be done so as not to create a nuisance.

The board cannot exercise the powers given by the 11 & 12 Vict. c. 63, s. 46, out of their district for the purpose of making new sewers. (*Haywood v. Lowndes*, 4 *Drew*. 454; 28 *L. J. Chanc.* 400.)

See the 11 & 12 Vict. c. 63, s. 46, *ante*, 447.

Provision for obtaining order for cleansing foul and offensive watercourses or open ditches lying near to or forming the boundaries of districts.

Sect. 31. In case any watercourse or open ditch lying near to or forming the boundary between the district of any local board and any adjoining parish or place shall be foul and offensive, so as injuriously to affect the district of such local board, any justice of the peace for the county, city, or borough in which such adjoining parish or place may be situate, may, on the application of such local board, summon the local authority for the purposes of the "Nuisances Removal Act, 1855," of such adjoining parish or place, to appear before the justices of the same county, city, or borough, to show cause why an order should not be made by the said justices for cleansing such watercourse or open ditch, and for executing such permanent or other structural works as may appear to such justices to be necessary; and such justices, after hearing the parties, or *ex parte* in case of the default of any of them to appear, may make such order with reference to the execution of the works, and the persons by whom the same shall be executed, and by whom and in what proportions the costs of such works shall be paid, and also as to the amount thereof, and the time and mode of payment, as to such justices shall seem reasonable; and any sums ordered to be paid by any justices in pursuance of this section shall be a charge upon and be payable out of the poor-rates of such adjoining parish or place, as if the same were legally incurred in the relief of the poor of such parish or place, and in default of payment may be levied upon the goods and chattels of such overseers by distress and sale thereof.

See the 18 & 19 Vict. c. 121, s. 3, *post*, tit. "Nuisance."

Local board may exercise powers of sect. 45 of 11 & 12 Vict. c. 63,

By the 24 & 25 Vict. c. 61, s. 4, local boards may exercise the powers given by the forty-fifth section of the "Public Health Act, 1848," (a) also

(a) See this section, *ante*, 446.

without their district, for the purpose of outfall or distribution of sewage, upon making due compensation, to be settled in the manner provided in the one hundred and forty-fourth section of the "Public Health Act, 1848." (a) Provided always, that nothing herein contained shall give or be construed to give power to any local board to construct or use any outfall, drain, or sewer for the purpose of conveying sewage or filthy water into any natural watercourse or stream until such sewage or filthy or refuse water be freed from all excrementitious or other foul or noxious matter, such as would affect or deteriorate the purity and quality of the water in such stream or watercourse.

Sect. 5. Provided also, that no sewer or other work shall be constructed or extended, under the enactment lastly hereinbefore contained, unless three months at the least before the commencement of such work notice of the intended work, describing the nature thereof, and stating the intended termini thereof, and the names of the parishes, townships, and places, and the turnpike-roads and streets, or places laid out or intended for streets, and other lands, if any, through, across, or under which the work is to be made, and naming a place where a plan of the intended work is open for inspection at all reasonable hours, shall be given by advertisement in one or more of the newspapers usually circulated in the place where the work is to be made, and a written or printed copy of such notice shall be served in manner directed by the "Public Health Act, 1848," on the owners or reputed owners, lessees or reputed lessees, and occupiers of the said lands, and on the overseers of such parishes, townships, or places, and the trustees, surveyors of highways, or others, having the care of such roads or streets.

For the manner of serving notices see the 11 & 12 Vict. c. 63, s. 150, *post*, subsect. 34.

Sect. 6. In case any of such owners, lessees, or occupiers, or such overseers, trustees, surveyors, or others as aforesaid, or any other owner, lessee, or occupier who would be affected by the proposed work, object to such work, and serve notice in writing of such objection on the local board at any time within the said three months, the proposed work shall not be made or commenced without the sanction of one of Her Majesty's principal secretaries of state, after such inquiry and report as hereinafter mentioned (unless such objection be withdrawn).

Sect. 7. It shall be lawful for the secretary of state, upon application of any local board, to appoint an inspector to make inquiry on the spot into the propriety of any such work as aforesaid, and into the objections thereto, and to hold one or more meeting or meetings for the purpose of hearing all persons desirous of being heard before him on the subject of such inquiry, and to report to such secretary of state upon the matters with respect to which such inquiry was directed.

Sect. 8. Where already or hereafter any premises not being within the limits of the district of the local board have a drain communicating, directly or indirectly, with a sewer within the district, and maintained by the local board, and any sewage from the premises flows into the sewer, there shall (except in cases where the owner is entitled to use such sewer without making any payment) be paid to the local board in respect thereof such a yearly sum as is agreed on between them and the owner of the premises, or, failing agreement between them, as on the application of the local board is determined by two justices; and the yearly sum so agreed on or determined shall be private improvement expenses, and shall be charged on the premises, and be paid and recover-

## 10. Sewers.

also without their district, if necessary, for purposes of outfall or distribution of sewage, on making compensation.

Previous notices of the intended works before commencement.

If objection be made by any party interested the work not to be proceeded with without sanction of secretary of state.

An inspector to be appointed to make inquiry on the spot, and report to the Secretary of State.

Yearly sum to be paid for premises without district drained into sewer within district.

(a) See this section, *post*, subsect. 34.

### 11. *House Drains, etc.*

able accordingly, as if the premises were within the district: Provided, that the yearly sum so charged shall cease to be payable if and when the connection between the drain from the premises and the sewer is discontinued, so that a proportionate part thereof up to the time of the discontinuance shall alone be payable; but if after the discontinuance the connection be re-established the yearly sum shall again become payable, and so from time to time.

As to the mode of recovering private improvement expenses, see the 11 & 12 Vict. c. 63, s. 90, *et seq.*, *post*, subsect. 24.

Mode of proceeding where sewer authority has made default in providing sufficient sewers, etc.

By the 29 & 30 Vict. c. 90, s. 49, where complaint is made to one of her Majesty's principal secretaries of state that a sewer authority or local board of health has made default in providing its district with sufficient sewers, or in the maintenance of existing sewers, or in providing its district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a nuisance authority has made default in enforcing the provisions of the Nuisances Removal Acts, or that a local board has made default in enforcing the provisions of the "Local Government Act," the secretary of state, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint; and if such duty is not performed by the time limited in the order, the said secretary of state shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a remuneration to the person appointed for superintending such performances, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

By the 31 & 32 Vict. c. 115, s. 8, referring to the preceding section, it is enacted that the sum so specified in the order of the secretary of state, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by the authority in default and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or their officers, or out of any rate applicable to the payment of any expenses properly incurred by the defaulting authority, and which rate is in this section referred to as the local rate; and in the event of any authority refusing to pay any such sum with costs as aforesaid for a period of fourteen days after demand, the secretary of state may by precept empower any person to levy by and out of the local rate such sum (the amount to be specified in the precept) as may in the opinion of the said Secretary of State be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt; and any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority itself would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons after repaying all sums of money so due in respect of the precept, shall pay the overplus, if any (the amount to be ascertained by the secretary of state), to or to the order of the defaulting authority.

### 11. HOUSE DRAINS, ETC.

No new house to be built without drains, etc.

By the 11 & 12 Vict. c. 63, s. 49, it shall not be lawful newly to erect any house, or to rebuild any house which may have been pulled down to or below the floor commonly called the ground floor, or to occupy any

house so newly erected or rebuilt, unless and until a covered drain or drains be constructed, of such size and materials, and at such level, and with such fall as upon the report of the surveyor shall appear to be necessary and sufficient for the proper and effectual drainage of the same and its appurtenances; and if the sea, or a sewer of the local board of health, or a sewer which they are entitled to use, be within one hundred feet of any part of the site of the house to be built or rebuilt, the drain or drains so to be constructed shall lead from and communicate with such one of those means of drainage as the said local board shall direct, or if no such means of drainage be within that distance, then the last-mentioned drain or drains shall communicate with and be emptied into such covered cesspool or other place, not being under any house, and not being within such distance from any house, as the said local board shall direct; and whosoever erects or rebuilds any house or constructs any drain contrary to this enactment shall be liable for every such offence to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, by action of debt; and if at any time, upon the report of the surveyor, it appear to the said local board that any house, whether built before or after the time when this Act is applied to the district in which it is situate, is without any drain, or without such a drain or drains communicating with the sea, or a sewer as is or are sufficient for the proper and effectual drainage of the same and its appurtenances, and if the sea, or a sewer of the said local board, or a sewer which they are entitled to use, be within one hundred feet of any part of such house, they shall cause notice in writing to be given to the owner or occupier of such house, requiring him forthwith, or within such reasonable time as shall be specified therein, to construct and lay down, in connection with such house and one of those means of drainage, one or more covered drain or drains, of such materials and size, at such level, and with such fall as upon the last-mentioned report shall appear to be necessary; and if such notice be not complied with, the said local board may, if they shall think fit, do the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or, by order of the said local board, shall be declared to be private improvement expenses, and be recoverable as such in manner hereinafter provided.

See sect. 129, *post*, subsect. 32, for the mode of recovering improvement expenses in a summary manner, and sect. 146, *post*, subsect. 34, for provisions by which the board may allow the owners time for payment. See also ss. 90, 91, and 92, *post*, 480, 481, for the mode of levying private improvement rates.

Whether these expenses are recovered summarily or by a private improvement rate, any person aggrieved may by sect. 120, *post*, subsect. 29, amended by the 21 & 22 Vict. c. 98, s. 65, appeal to one of her Majesty's principal secretaries of state, whose decision will be conclusive.

Sect. 50. If it shall appear to a majority of not less than three-fifths of the rated inhabitants of any parish or place containing less than two thousand inhabitants on the then last census, in which this Act shall not have been applied by order in council or provisional order as aforesaid, assembled at a public meeting to be called as is hereinafter provided, that it would contribute to the health and convenience of the inhabitants that any pool, place, open ditch, sewer, drain, or place containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health, should be drained, cleansed, covered, or filled up, or that a sewer should be made or improved, a well dug, or a pump provided, for the public use of the inhabitants, the churchwardens and overseers of such parish or place shall procure a plan and an estimate of the cost of executing such works or any of them, and shall lay the same before another public meeting of such rated inhabitants, to be called as is hereinafter provided; and if

# 11. *House Drains, etc.*

Local board may, upon report of surveyor that any house is without a drain, cause one to be constructed, etc

As to construction of sewers, wells, pumps, etc., for parishes, etc., with less than 2000 inhabitants, and in which this Act is not otherwise applied.



### 11. *House Drains, etc.*

the same shall be approved and sanctioned by a majority of the rated inhabitants assembled at such last-mentioned meeting, such churchwardens and overseers shall cause the works in respect of which such estimate shall have been made and sanctioned as aforesaid to be executed, and shall pay the cost thereof out of the poor rates of such parish or place: Provided always, that notice of every such meeting shall be given by such churchwardens and overseers as is by this Act directed to be given by superintending inspectors, before proceeding upon inquiries previously to the application of this Act, and every such notice shall also contain a statement of the works proposed or intended to be submitted for consideration and approval.

By the 23 & 24 Vict. c. 77, s. 7, *post*, tit. "*Nuisance*," all wells, fountains, and pumps provided under this section and not being the property of or vested in any person or corporation other than officers of the place, are vested in the local authority under that Act. As to the punishment for fouling them, see sect. 8 of the same Act, *post*, tit. "*Nuisance*."

Penalty on persons erecting houses without waterclosets, etc.

Local board may, upon report of surveyor, order water-closets, etc., to be erected in houses, whether built before or after this Act is applied, etc.

Sect. 51. It shall not be lawful newly to erect any house, or to rebuild any house pulled down to or below the floor commonly called the ground floor, without a sufficient watercloset or privy and an ashpit, furnished with proper doors and coverings; and whosoever offends against this enactment shall be liable to a penalty not exceeding twenty pounds; and if at any time, upon the report of the surveyor, it appear to the local board of health that any house, whether built before or after the time when this Act is applied to the district in which it is situate, is without a sufficient watercloset or privy and an ashpit, furnished with proper doors and coverings, the said local board shall give notice in writing to the owner or occupier of such house requiring him forthwith, or within such reasonable time as shall be specified therein, to provide a sufficient watercloset or privy and an ashpit, so furnished as aforesaid, or either of them, as the case may require; and if such notice be not complied with the said local board may, if they shall think fit, cause to be constructed a sufficient watercloset or privy and an ashpit, or either of them, or do such other works as the case may require; and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or by order of the said local board shall be declared to be private improvement expenses, and be recoverable as such in manner hereinafter provided: Provided always, that where a watercloset or privy has been and is used in common by the inmates of two or more houses, or if, in the opinion of the said local board, a watercloset or privy may be so used, they need not require the same to be provided for each house.

By the 21 & 22 Vict. c. 98, s. 62, *post*, subsect. 32, and the 11 & 12 Vict. c. 43, s. 11, *post*, Vol. V., tit. "*Summons*," summary proceedings for recovering these expenses must be taken within six months from the date of the service of notice of demand. The mode of recovering private improvement expenses is pointed out in sect. 129, *post*, subsect. 32.

Certain water-closets to be constructed in factories, etc.

Sect. 52. If at any time it appear to the local board of health, upon the report of the surveyor, that any house is used or intended to be used as a factory or building in which persons of both sexes, and above twenty in number, are employed or intended to be employed at one time in any manufacture, trade, or business, the said local board may, if they shall think fit, by notice in writing to the owner or occupier of such house, require them or either of them, within a time to be specified in such notice, to construct a sufficient number of waterclosets or privies for the separate use of each sex; and whosoever neglects or refuses to comply with any such notice shall be liable for each default to a penalty not exceeding twenty pounds, and a further penalty not exceeding forty shillings for every day during which the default is continued.

Sect. 53, relating to notice of building and rebuilding and penalties for

rebuilding without notice, is repealed, and other provisions are substituted by the 21 & 22 Vict. c. 98, ss. 34 & 35, *post*, 456 and 467.

# 11. *House Drains, etc.*

Sect. 54. The local board of health shall see and provide that all drains whatsoever, and the waterclosets, privies, cesspools, and ashpits within their district, are constructed and kept so as not to be a nuisance or injurious to health; and the surveyor may, by written authority of the said local board (who are hereby empowered to grant such authority, upon the written application of any person showing that the drain, watercloset, privy, cesspool, or ashpit in respect of which application is made is a nuisance or injurious to health, but not otherwise), and after twenty-four hours' notice in writing, or in case of emergency without notice, to the occupier of the premises to which such drain, watercloset, privy, cesspool, or ashpit is attached or belongs, enter such premises, with or without assistants, and cause the ground to be opened, and examine and lay open such drain, watercloset, privy, cesspool, or ashpit; and if the drain, watercloset, privy, cesspool, or ashpit in respect of which such examination is made be found to be in proper order and condition, he shall cause the ground to be closed, and any damage done to be made good as soon as can be, and the expenses of the works shall be defrayed by the said local board, but if upon such examination such drain, watercloset, privy, cesspool, or ashpit appear to be in bad order and condition, or to require alteration or amendment, he shall cause the ground to be closed, and the said local board shall cause notice in writing to be given to the owner or occupier of the premises upon or in respect of which the examination was made, requiring him forthwith, or within such reasonable time as shall be specified in such notice, to do the necessary works; and if such notice be not complied with the person to whom it is given shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default, and the said local board may, if they shall think fit, execute such works, and the expenses incurred by them in so doing shall be recoverable by them from the owner in a summary manner, or by order of the said local board shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided.

Local board to provide that drains, water-closets, etc., do not become a nuisance.

By the 21 & 22 Vict. c. 98, s. 33, *post*, 456, the closing of the ground is dispensed with, if the necessary works are undertaken forthwith.

The power to determine the nature and extent of the works to be done under the provisions of this section is vested in the local board; and, when proceedings are taken before justices to recover penalties for non-compliance with the notices, the justices have no power to review the determination of the board. (*Hargreaves v. Taylor*, 3 B. & S. 613; 32 L. J., M. C. 111.)

The mode of recovering private improvement expenses is pointed out in sect. 129, *post*, subsect. 32.

By the 31 & 32 Vict. c. 115, s. 7, any enactment of any Act of Parliament in force in any place requiring the construction of a watercloset shall, with the approval of the local authority, be satisfied by the construction of an earth-closet, or other place for the reception and deodorization of fecal matter, made and used in accordance with any regulation from time to time issued by the local authority. The local authority may, as respects any houses in which such earth-closets or other places as aforesaid are in use, with their approval, dispense with the supply of water required by any contract or enactment to be furnished to the waterclosets in such houses on such terms as may be agreed upon between such authority and the persons or body of persons providing or required to provide such supply of water. The local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house or houses within their district for the purpose of any earth-closets or other place

Earth-closets may in certain cases be constructed instead of waterclosets.

### 12. *Surface-cleansing, etc.*

as aforesaid. The local authority may themselves construct or require to be constructed earth-closets or other such places as aforesaid in all cases where, under any enactment in force they might construct water-closets or privies, or require the same to be constructed, with this restriction, that no person shall be required to construct an earth-closet or other place as aforesaid in any house instead of a watercloset if he prefer to comply with the provisions of the enactment in force requiring the construction of a watercloset, and a supply of water for other purposes is furnished to such house, and that no person shall be put to greater expense in constructing an earth-closet or other place as aforesaid, than he would be put to by compliance with the provisions of any enactment as to waterclosets or privy accommodation which he might have been compelled to comply with if this section had not been passed. Local authority shall, for the purposes of this Act, mean any local board and any sewer authority.

### 12. SURFACE-CLEANSING, ETC.

The 11 & 12 Vict. c. 63, s. 55, relating to the cleansing of the streets and the making bye-laws for the removal of dust, is repealed, and other provisions are substituted by the 21 & 22 Vict. c. 98, s. 32, *post*, 455.

Local board to cause places for deposit of dust, soil, etc., to be provided.

Sect. 56. The local board of health may, in their discretion, provide, in proper and convenient situations, boxes or other conveniences for the temporary deposit and collection of dust, ashes, and rubbish, and also fit buildings and places for the deposit of the sewage, soil, dung, filth, ashes, dust, and rubbish collected by such board.

The rest of this section, relating to the sale of the sewage, etc., and the punishment of persons removing sewage, etc., without the consent of the board is repealed, and other provisions are substituted by the 21 & 22 Vict. c. 98, s. 32, *post*, 455.

Public necessities.

Sect. 57. The local board of health may, if they think fit, provide and maintain, in proper and convenient situations, waterclosets, privies, and other similar conveniences for public accommodation, and defray the necessary expenses out of the district rates to be levied under this Act.

See, as to the general district rate, s. 87, *post*, 478.

Offensive ditches, drains, etc., to be cleansed or covered.

Sect. 58. The local board of health shall drain, cleanse, cover, or fill up, or cause to be drained, cleansed, covered, or filled up, all ponds, pools, open ditches, sewers, drains, and places containing or used for the collection of any drainage, filth, water, matter, or thing of an offensive nature, or likely to be prejudicial to health; and they shall cause written notice to be given to the person causing any such nuisance, or to the owner or occupier of any premises whereon the same exists, requiring him, within a time to be specified in such notice, to drain, cleanse, cover, or fill up any such pond, pool, ditch, sewer, drain, or place, or to construct a proper sewer or drain for the discharge thereof, as the case may require; and if the person to whom such notice is given fail to comply therewith, the said local board shall execute the works mentioned or referred to therein, and the expenses incurred by them in so doing shall be recoverable by them from him in a summary manner, or by order of the said local board shall be declared to be private improvement expenses, and be recoverable as such in the manner hereinafter provided: Provided always, that the said local board may order that the whole or a portion of the expenses incurred in respect of any such last-mentioned works be defrayed out of the special or general district rates to be levied under this Act, and in case of any such order the whole or such portion of the expenses as may be mentioned therein shall be defrayed and levied accordingly.

The duty to cleanse is only conditional on the neglect of the owner or

occupier of the land on which the nuisance exists to remove it after notice. (*Reg. v. Godmanchester Local Board*, *Law Rep.*, 1 Q.B. 328; 35 L. J., Q. B. 125.)

As to the mode of recovering private improvement expenses, see sect. 129, *post*, subsect. 32.

Special district rates are abolished by the 21 & 22 Vict. c. 98, s. 54, *post*, subsect. 24. The mode of levying general district rates is pointed out in sect. 87, *post*, 478.

See further as to nuisances, *post*, tit. "Nuisance."

Sect. 59. Whosoever keeps any swine or pigsty in any dwelling-house, or so as to be a nuisance to any person, or suffers any waste or stagnant water to remain in any cellar or place within any dwelling-house for twenty-four hours after written notice to him from the local board of health to remove the same, and whosoever allows the contents of any watercloset, privy, or cesspool to overflow or soak therefrom, shall for every such offence be liable to a penalty not exceeding forty shillings, and to a further penalty of five shillings for every day during which the offence is continued; and the said local board shall abate or cause to be abated every such nuisance, and the expenses incurred by them in so doing shall be repaid to them by the occupier of the premises upon which the same exists, and be recoverable from him in the summary manner hereinafter provided; and if at any time it appear to the inspector of nuisances that any accumulation of manure, dung, soil, or filth, or other offensive or noxious matter whatsoever, ought to be removed, he shall give notice to the person to whom the same belongs, or to the occupier of the premises whereon it exists, to remove the same; and if at the expiration of twenty-four hours after such notice the same be not complied with, the manure, dung, soil, or filth, or matter referred to, shall be vested in and be sold or disposed of by the said local board, and the proceeds thereof shall be carried to the district fund account hereinafter mentioned.

Penalties for keeping swine, etc., in improper situations, allowing waste water to remain in cellars, etc.

Removal of filth, on certificate of inspector of nuisances.

See sect. 129, *post*, subsect. 32, as to the mode of recovering the expenses of abating these nuisances.

See also the 21 & 22 Vict. c. 98, s. 32, *infra*, as to the provision for the recovery of the expenses of the removal of these accumulations.

The district fund account is mentioned in the 11 & 12 Vict. c. 63, s. 87, *post*, 478.

Sect. 60. If upon the certificate of the officer of health (if any), or of any two medical practitioners, it appear to the local board of health that any house or part thereof is in such a filthy or unwholesome condition that the health of any person is affected or endangered thereby, or that the whitewashing, cleansing, or purifying of any house or part thereof would tend to prevent or check infectious or contagious disease, the said local board shall give notice in writing to the owner or occupier of such house or part thereof to whitewash, cleanse, or purify the same, as the case may require; and if the person to whom notice is so given fail to comply therewith within such time as shall be specified in the said notice, he shall be liable to a penalty not exceeding ten shillings for every day during which he continues to make default; and the said local board may, if they shall think fit, cause such house, building, or part thereof to be whitewashed, cleansed, or purified, and the expenses incurred by them in so doing shall be repaid by the owner or occupier in default, and be recoverable from either of them in the summary manner hereinafter provided.

Houses to be purified on certificate of officer of health or of two medical practitioners.

By the 21 & 22 Vict. c. 98, s. 32, the fifty-fifth and fifty-sixth sections of the "Public Health Act, 1848," shall be repealed, excepting so much of the fifty-sixth section as relates to providing conveniences for the temporary deposit of dust, ashes, and rubbish, and also fit buildings and

Power to local boards to cleanse or contract for cleansing.

12. *Surface-cleansing, etc.* places for the deposit of sewerage and other matters collected by the local board; and in lieu thereof be it enacted,

1. That local boards may themselves undertake or contract with any person for

The proper cleansing and watering of streets;

The removal of house refuse from premises;

The cleansing of privies, ashpits and cesspools;

either for the whole or any part of their district; and all matters thus collected by the local board or contractor may be sold or otherwise disposed of, and any profits thus made by the local board shall be carried to the district fund account:

2. If any person, not being the occupier of a house within the district, removes, or obstructs the local board or contractor in removing, any matters hereby authorized to be removed by the local board, he shall for each offence incur a penalty not exceeding five pounds; and if any person, being the occupier of a house within the district, removes, or obstructs the local board or contractor in removing, any such matters (except in cases where such matters are produced on his own premises, and are removed for sale or for his own use for manure, and are in the meantime kept so as not to be a nuisance), he shall for each offence incur a penalty not exceeding forty shillings:

3. In parts where the local board do not themselves undertake or contract with any person for—

The cleansing of footways and pavements adjoining any premises;

The removal of refuse from any premises;

The cleansing of privies, ashpits, and cesspools,—

they may make bye-laws imposing the duty of such cleansing or removal on the occupier of any such premises:

4. The local board may make bye-laws for the prevention of nuisances arising from snow, filth, dust, ashes, and rubbish within their district, or of the keeping of animals so as to be injurious to the public health;

5. Whenever the local board have removed any noxious or offensive accumulation under the fifty-ninth section of the "Public Health Act, 1848," the expenses of removal, so far as the same are not covered by the sale of the said accumulation, shall be recoverable in a summary manner from the occupier, or, where there is no occupier, from the owner of the premises on which such accumulation existed, or from the person causing such accumulation, or may, by order of the board, be declared to be private improvement expenses.

The bye-laws made under this section must be such only as are in terms authorized by this section. (*Reg. v. Wood*, 5 *El. & Bl.* 49; *S.C. nom. Reg. v. Rose*, 24 *L. J., M. C.* 130.)

See the 11 & 12 Vict. c. 63, s. 59, *ante*, 455.

Power to local board to make bye-laws as to nuisances.

Provision for recovery of expenses of removal of offensive accumulations under 11 & 12 Vict. c. 63.

Amendment of section 54 of 11 & 12 Vict. c. 63, for purposes herein named.

Sect. 33. Whenever the surveyor in the course of any examination, made by him in pursuance of the fifty-fourth section of the "Public Health Act, 1848," finds any such drain watercloset, privy, cesspool, or ashpit, as therein mentioned, to be in bad order and condition, or to require alteration, it shall not be necessary for him to cause the ground to be closed before the necessary works are set about for amending such drain, watercloset, privy, cesspool, or ashpit; provided that such necessary works are undertaken forthwith.

See the 11 & 12 Vict. c. 63, s. 54, *ante*, 453.

Health Act, 1848, shall be repealed; and in lieu thereof be it enacted as follows:

Every local board may make bye-laws with respect to the following matters; (that is to say,)

1. With respect to the level, width, and construction of new streets, and the provisions for the sewerage thereof;
2. With respect to the structure of walls of new buildings for securing stability and the prevention of fires;
3. With respect to the sufficiency of the space about buildings to secure a free circulation of air, and with respect to the ventilation of buildings.
4. With respect to the drainage of buildings, to waterclosets, privies, ashpits, and cesspools in connection with buildings, and to the closing of buildings or parts of buildings unfit for human habitation, and to prohibition of their use for such habitation:

And they may further provide for the observance of the same by enacting therein such provisions as they think necessary as to the giving of notices, as to the deposit of plans and sections by persons intending to lay out streets or to construct buildings, as to inspection by the local board, and as to the power of the local board to remove, alter, or pull down any work begun or done in contravention of such bye-laws: Provided always, that no such bye-law shall affect any building erected before the date of the constitution of the district:

But for the purposes of this Act the re-erecting of any building pulled down to or below the ground floor, or of any frame building of which only the framework shall be left down to the ground floor, or the conversion into a dwelling-house of any building not originally constructed for human habitations, or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building.

This section does not empower the board to make bye-laws applying to open spaces belonging to old buildings. (*Tucker v. Rees*, 7 Jur. N. S. 629.)

Where, among other bye-laws made by a local board under the general heading of "width and level of new streets," there was one which provided that "no dwelling-house should be built immediately adjoining any back street," it was held that the words "back street" must be read as "new back street," and that a new building opening into an old back street did not violate the bye-law. (*Shiel v. Mayor, etc., of Sunderland*, 6 H. & N. 796; 30 L. J., M. C. 215.)

Where a proprietor of a house, yard, and coach-house and stables erected before the constitution of a local board, subsequently pulled down the coach-house and stable below the ground floor, and erected a building partly upon their site and partly upon the yard, with rooms over, the ground floor opening into the yard and also into an old back street immediately adjoining, but the access to the rooms above was by a covered way from the old house, the object of the new building being to increase the accommodation of the old house, which had been converted into an hotel, the Court held that there was no new building erected within the meaning of the statute, but only an addition to the old building. (*Shiel v. Mayor, etc., of Sunderland*, 6 H. & N. 796; 30 L. J., M. C. 215.)

The bye-laws made under this section must not exceed the powers conferred by the section. (See *Brown v. Holyhead Local Board*, post, 467, and *Young v. Edwards*, 33 L. J., M. C. 227.)

The section does not authorize the board to make a bye-law so as to affect premises erected prior to the formation of the district. (*Burgess v. Peacock*, 16 C. B., N. S. 624.) Nor does it authorize a bye-law that "no dwelling-house shall be erected without having, at the rear or side thereof, a good and sufficient back street or roadway, at least twelve feet wide,

12. *Surface-cleansing, etc.*

of 11 & 12 Vict. c. 63, as to new streets and houses, repealed, and the provisions herein named to be instead.

### 13. *Slaughter-houses, etc.*

communicating with some adjoining public street or highway, for the purpose of affording access to the privy or ashpit of such house." (*Waite v. The Local Board of Garston, Law Rep. 3 Q. B. 5; 37 L. J., M. C. 19.*) Nor is a bye-law valid that, before beginning to dig or lay the foundation of any new building, a written notice thereof, of one month at the least, shall be left with the clerk at one of the monthly meetings of the board, accompanied with plans and sections, and that whosoever shall neglect or refuse to give such notice shall be liable to a penalty not exceeding £5. (*Hattersley v. Burr, 4 H. & C. 523.*) If a person gives a local board notice of his intention to build, and leaves with them plans and sections, he may at once commence the building, subject to the liability to have it altered or pulled down if not in conformity with the bye-laws of the board. (*Ib.*)

### 13. SLAUGHTER-HOUSES, ETC.

The 11 & 12 Vict. c. 63, s. 61, requiring slaughter-houses to be registered, is repealed by the 21 & 22 Vict. c. 98, s. 48, *post*, subsect. 28.

Local board may provide slaughter-houses, and make bye-laws with respect to slaughter-houses in general.

Sect. 62. The local board of health may from time to time, if they shall think fit, provide premises for the purpose of being used as slaughter-houses; and they shall make bye-laws for and with respect to the management and charges for the use of the premises so provided, and with respect to the inspection of all slaughter-houses, and for keeping the same in a cleanly and proper state: Provided always, that nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities of any persons incorporated by any local Act of Parliament passed before the passing of this Act for the purpose of making and maintaining slaughter-houses for the accommodation of any city, town, borough or place.

So much of this section as empowers the local board to make bye-laws with respect to all slaughter-houses is repealed by the 21 & 22 Vict. c. 98, s. 48, *post*, subsect. 28.

Power to inspector of nuisances to enter places used for sale of butchers' meat, etc.

Sect. 63. The inspector of nuisances may and he is hereby empowered, at all reasonable times, with or without assistants, to enter into and inspect any shop, building, stall, or place kept or used for the sale of butchers' meat, poultry, or fish, or as a slaughter-house, and to examine any animal, carcase, meat, poultry, game, flesh, or fish, which may be therein; and in case any animal, carcase, meat, poultry, game, flesh, or fish appear to him to be intended for the food of man, and to be unfit for such food, the same may be seized; and if it appear to a justice, upon the evidence of a competent person, that any such animal, carcase, meat, poultry, game, flesh, or fish is unfit for the food of man, he shall order the same to be destroyed, or to be so disposed of as to prevent its being exposed for sale or used for such food; and the person to whom such animal carcase, meat, poultry, game, flesh or fish belongs, or in whose custody the same is found, shall be liable to a penalty not exceeding ten pounds for every animal or carcase, fish or piece of meat, flesh, or fish, or any poultry or game, so found, which penalty may be recovered before two justices in the manner hereinafter provided with respect to penalties the recovery whereof is not expressly provided for.

See, as to the recovery of penalties, ss. 129-134, *post*, subsect. 32.

Offensive trades newly established to be subject to regulation of local board of health.

Sect. 64. The business of a blood-boiler, bone-boiler, fellmonger, slaughterer of cattle, horses, or animals of any description, soap-boiler, tallow-melter, tripe-boiler, or other noxious or offensive business, trade, or manufacture, shall not be newly established in any building or place, after this Act is applied to the district in which such building or place is situate, without the consent of the local board of health, unless the said general board shall otherwise direct; and whosoever offends against this enactment shall be liable for each offence to a penalty of fifty pounds,

and a further penalty of forty shillings for each day during which the offence is continued; and the said local board may from time to time make such bye-laws with respect to any such businesses so newly established as they may think necessary and proper, in order to prevent or diminish the noxious or injurious effects thereof.

Brick-making is not necessarily a noxious or offensive business, trade, or manufacture within the meaning of this section. (*Wanstead Local Board v. Hill*, 13 C. B., N. S. 479; 32 L. J., M. C. 135.)

See, as to the making of bye-laws, ss. 115, 116, *post*, subsect. 26.

Where a building suitable for the slaughtering of cattle was completed by the owners, and other persons were allowed to slaughter cattle there at a fixed charge, using the tackle in the building, it was held that the owners, though neither they nor their servants took any part in slaughtering the cattle, were rightly convicted under this section for newly establishing a business. (*Liverpool Cattle Market Co. v. Hodson*, 36 L. J., M. C. 30; *Law Rep. 2 Q. B.* 131.)

Certain clauses of the "Towns Improvement Act" (incorporated in the "Public Health Act,") provide that no slaughter-house shall be erected without the leave of the board of health. A local Act provided that a company incorporated thereby for the purpose of managing the property of a corporation, might, with the consent of the corporation, erect slaughter-houses in the borough. The corporation constituted the local board of health for the borough under the provisions of the 11 & 12 Vict. c. 63. The company had erected slaughter-houses with the consent of the corporation, testified by a writing signed by their clerk; but the corporation afterwards, when acting as the local board, refused to license the buildings as slaughter-houses. Held, that as the local Act did not relate to the protection of the public health, its provisions as to obtaining the consent of the corporation did not override the provisions of the "Towns Improvements Act," and that the consent of the corporation being given *alio intuitu*, was not given so as to operate as the licence of the local board of health. (*Anthony v. Brecon Market Company*, 36 L. J. Ex. 113; *Law Rep. 2 Ex.* 167.)

Sect 65. Nothing in this Act shall be construed to render lawful any Act, matter, or thing whatsoever which but for this Act would be deemed to be a nuisance, nor to exempt any person from any liability, prosecution, or punishment to which he would have been otherwise subject in respect thereof.

Act not to affect present law as to nuisances.

See also sect. 134, *post*, subsect. 32.

#### 14. COMMON LODGING-HOUSES (a).

By the 11 & 12 Vict. c. 63, s. 66, it shall not be lawful to keep any common lodging-house unless the same be registered as next hereinafter mentioned; and the local board of health shall cause a register to be kept in which shall be entered the name of every person applying to register any common lodging-house kept by him, and the situation of every such house; and the said local board shall from time to time make bye-laws, for fixing the number of lodgers who may be received into each house so registered for promoting cleanliness and ventilation therein, and with respect to the inspection thereof, and the conditions and restrictions under which such inspection may be made; and the person keeping any such lodging-house shall give access to the same when required by any persons who shall produce the written authority of the said local board in this behalf, for the purpose of inspecting the same, or for introducing or using therein any disinfecting process, and the ex-

Common lodging-houses to be registered.

(a) And see also tit. "Lodging-houses," *post*.



#### 14. Common Lodging-houses.

Penalty on neglect.

Cellars, etc. newly built not to be let as dwelling rooms.

No cellars, etc. to be let except under certain conditions.

Act not to come into operation until the expiration of a certain time, in case of cellars, etc. already occupied as dwellings.

penses incurred by the said local board in so introducing or using any disinfecting process shall be recoverable by them in a summary manner from the person keeping the lodging-house in which the same shall have been used or introduced; and whosoever shall receive lodgers in any common lodging-house without having registered the same as required by this Act, or shall refuse to admit therein, at any time between the hour of eleven in the forenoon and the hour of four in the afternoon, any person authorized by the said local board as last aforesaid, shall for every such offence be liable to a penalty not exceeding forty shillings.

See, as to the making of bye-laws, ss. 115, 116, *post*, subsect. 26.

Sect. 67. It shall not be lawful to let or occupy or suffer to be occupied separately as a dwelling any vault, cellar, or underground room built or rebuilt after the passing of this Act, or which shall not have been so let or occupied before the passing of this Act; and it shall not be lawful to let or continue to let, or to occupy or suffer to be occupied, separately as a dwelling, any vault, cellar, or underground room whatsoever, unless the same be in every part thereof at least seven feet in height, measured from the floor to the ceiling thereof, nor unless the same be at least three feet of its height above the surface of the street or ground adjoining or nearest to the same, nor unless there be outside of and adjoining the same vault, cellar, or room, and extending along the entire frontage thereof, and upwards from six inches below the level of the floor thereof up to the surface of the said street or ground, an open area of at least two feet and six inches wide in every part, nor unless the same be well and effectually drained by means of a drain the uppermost part of which is one foot at least below the level of the floor of such vault, cellar, or room, nor unless there be appurtenant to such vault, cellar or room the use of a watercloset or privy and an ashpit, furnished with proper doors and coverings, kept and provided according to the provisions of this Act, nor unless the same have a fire-place with a proper chimney or flue, nor unless the same have an external window of at least nine superficial feet in area clear of the sash frame, and made to open in such manner as shall be approved by the surveyor, except in the case of an inner or back vault, cellar, or room let or occupied along with a front vault, cellar, or room as part of the same letting or occupation, in which case the external window may be of any dimensions, not being less than four superficial feet in area clear of the sash frame; and whosoever lets, occupies, or continues to let, or knowingly suffers to be occupied, for hire or rent, any vault, cellar, or underground room, contrary to this Act, shall be liable for every such offence to a penalty not exceeding twenty shillings for every day during which the same continues to be so let or occupied after notice in writing from the local board of health in this behalf: Provided always, that in any area adjoining a vault, cellar, or underground room there may be steps necessary for access to such vault, cellar, or room, if the same be so placed as not to be over, across, or opposite to the said external window, and so as to allow between every part of such steps and the external wall of such vault, cellar, or room a clear space of six inches at the least, and that over or across any such area there may be steps necessary for access to any building above the vault, cellar, or room to which such area adjoins, if the same be so placed as not to be over, across, or opposite to any such external window: Provided also, that every vault, cellar, or underground room in which any person passes the night shall be deemed to be occupied as a dwelling within the meaning of this Act: Provided also, that the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms shall not, so far as the same relate to vaults, cellars, and underground rooms which shall have been let or occupied as dwellings before the passing of this Act, come into force or operation until the expiration of one year from the passing of this Act, nor within any district until the expiration of six months from the time

when this Act shall have been applied thereto; and all churchwardens and overseers of the poor shall from time to time after the passing of this Act cause public notice of the provisions of this Act with respect to the letting and occupation of vaults, cellars, and underground rooms to be given in such manner as may appear to them to be best calculated to make the same generally known.

By the 29 & 30 Vict. c. 90, s. 42 *post*, tit. "Nuisance," this section is applied to every place where such dwellings are not regulated by any other Act.

### 15. *Management of Streets.*

Churchwardens, etc. to give notice of enactment.

### 15. MANAGEMENT OF STREETS.

By the 11 & 12 Vict. c. 63, s. 68, all present and future streets, being or which at any time become highways within any district, and the pavements, stones, and other materials thereof, and all buildings, improvements, and other things provided for the purposes thereof by any surveyor of highways, or by any person serving the office of surveyor of highways, shall vest in and be under the management and control of the said local board of health; and the said local board shall from time to time cause all such streets to be levelled, paved, flagged, channelled, altered, and repaired, as and when occasion may require, and they may from time to time cause the soil of any such street to be raised, lowered, or altered as they may think fit, and place and keep in repair fences and posts for the safety of foot passengers; and whosoever wilfully displaces, takes up, or injures the pavement, stones, materials, fences, or posts of any such street, without the consent of the said local board, shall be liable for every such offence to a penalty not exceeding five pounds, and a further sum not exceeding five shillings for every square foot of the pavement, stones, or other materials so displaced, taken up, or injured.

Management of streets vested in local board.

By the 15 & 16 Vict. c. 42, s. 13, *post*, 463, the term highway is declared to mean any highway repairable by the inhabitants at large.

By sect. 117, *post*, subsect. 29, the office of surveyor of highways within the district is transferred to the local board; and by sect. 118, *post*, subsect. 27, existing liabilities to pave, flag, etc., are reserved.

See, as to the recovery and application of penalties, sects. 129-134, *post*, subsect. 32.

By the 12 & 13 Vict. c. 94, s. 8, *post*, 472, the local board may contract for the lighting of streets, etc., and may provide lamps, etc.

See, as to the fund for repairs, the 21 & 22 Vict. c. 98, s. 37, *post*, subsect. 27.

This section only gives a discretionary power to the local board to place and keep in repair fences, etc., and does not impose upon them an absolute duty to do so; and therefore, where a local board left unfenced a goit adjoining a public footpath within their district, by reason of which the plaintiff's husband, while using the footpath, fell into the goit and was drowned, it was held that they were not liable to an action. (*Wilson v. Mayor, etc., of Halifax*, *Law Rep.* 3 *Ex.* 114; 37 *L. J.*, *Ex.* 44.)

Sect. 69. In case any present or future street, or any part thereof (not being a highway), be not sewered, levelled, paved, flagged, and channelled to the satisfaction of the local board of health, such board may, by notice in writing to the respective owners or occupiers of the premises fronting, adjoining, or abutting upon such parts thereof as may require to be sewered, levelled, paved, flagged, or channelled, require them to sewer, level, pave, flag, or channel the same within a time to be specified in such notice; and if such notice be not complied with, the said local board may, if they shall think fit, execute the works mentioned or referred to therein; and the expenses incurred by them in so doing shall be paid by the owners in default, according to the frontage of their respective premises, and in such proportion as shall be settled by the surveyor, or in case of dispute as shall be settled by arbitration (having

Power to compel paving, etc., of private streets.

15. *Management of Streets.*

regard to all the circumstances of the case) in the manner provided by this Act; and such expenses may be recovered from the last-mentioned owners in a summary manner, or the same may be declared by order of the said local board to be private improvement expenses, and be recoverable as such in the manner hereinafter provided.

This section does not give the board power to make entirely new streets, and to compel the adjoining owners to pay the expenses of paving them, but is confined to existing streets, not repairable by the parish. (*Kingston-upon-Hull Local Board v. Jones*, 1 *H. & N.* 489; 26 *L. J.*, *Ex.* 289.) See, however, the 21 & 22 Vict. c. 98, s. 68, *post*, subsect. 34, by which the powers of the board are extended.

By the 15 & 16 Vict. c. 42, s. 13, *post*, 463, the term "highway" is declared to mean any highway repairable by the inhabitants at large.

The levelling intended in this section has reference merely to some want of equality or want of uniformity in the street itself; and the local board has no power to require the level of a street to be raised or lowered so as to bring it into uniformity with the adjacent streets. (*Caley v. Kingston-upon-Hull Local Board*, 5 *B. & S.* 815; 34 *L. J.*, *M. C.* 7.)

See sect. 150, *post*, subsect. 34, as to the service of the notice. It need not be authenticated in the manner pointed out by sect. 149, *post*, subsect. 34, but may be signed by the clerk only. (*Barnsley Local Board of Health v. Sedgwick*, *Law Rep.* 2 *Q. B.* 185; 36 *L. J.*, *M. C.* 65.)

By the 24 & 25 Vict. c. 61, s. 16, *post*, 466, plans and sections must be deposited before the notice can be given. Sect. 17 of the same Act, *post*, 467, gives a form of notice.

For the meaning of the word "owner," see sect. 2, *ante*, 416.

A local board required the owners of property adjoining a street, not being a highway, to level it; and, they having made default, the local board caused the work to be done by contract. Before making the contract no estimate was made of the annual expense of repairing the work when done, nor was any report obtained as to whether it would be more advantageous to contract only for the execution of the work, or for the execution and maintenance thereof. The Court, however, held that, as the work when complete would not be repaired and maintained under the Act or out of the rates, no such estimate or report was required; and that the local board might enforce payment of the expenses from the owners, notwithstanding the absence of the estimate and report. (*Cunningham v. Wolverhampton Local Board*, 7 *El. & Bl.* 187; 26 *L. J.*, *M. C.* 33.)

The expenses of each owner should be apportioned according to the frontage of the premises irrespective of the width of the street. (*Reg. v. Newport Local Board*, 3 *B. & S.* 341; 32 *L. J.*, *M. C.* 97.) And a railway and canal company whose premises abut on a street, but with a fence between them and the street, is liable to be charged. (*Ib.*)

The question to be settled by arbitration is the proportion to be borne by a defaulting owner, and not whether the expenses are reasonable or properly incurred by the board. (*Bayley v. Wilkinson*, 16 *C. B.*, *N. S.* 161; 33 *L. J.*, *M. C.* 161.) See, as to the mode of proceeding, sects. 123-128, *post*, subsect. 31.

The manner of recovering private improvement expenses is pointed out in sect. 90, *post*, subsect. 24. But by the 21 & 22 Vict. c. 98, s. 38, *post*, 464, no incumbent or minister of any church, chapel, etc., is to be liable to any expenses in respect of such church, chapel, etc.

Certain streets not highways to be deemed such, and repaired by local board.

Sect. 70. If any present or future street, not being a highway at the time when this Act is applied to the district in which it is situate, be sewered, levelled, paved, flagged, and channelled to the satisfaction of the local board of health, the said local board may, if they shall think fit, by notice in writing put up in any part of the street, declare the same to be a highway, and thereupon the same shall become a highway, and be from time to time repaired by them out of the rates levied in

that behalf under the authority of this Act: and every such notice shall be entered amongst the proceedings of the said local board: Provided always, that no street shall become a highway as last aforesaid if within one month after notice in writing shall have been put up as last aforesaid the proprietor of such street, or the person representing or entitled to represent such proprietor, shall by notice in writing to the said local board object thereto.

The powers given by this section are extended by the 21 & 22 Vict. c. 98, s. 38, *post*, 464. See also the 21 & 22 Vict. c. 98, s. 42, *post*, 465, as to objections to be made by the proprietor of the street.

A landowner cannot dedicate a road to the public, so as to throw the expense of repairing it on the inhabitants, either under this statute or under the 5 & 6 Will. 4, c. 50, s. 23, without the consent of the local board. (*Reg. v. Dukinfield*, 4 B. & S. 158; 32 L. J., M. C. 230.)

Sect. 71. If and when, for the purposes of this Act, the local board of health deem it necessary to raise, sink, or otherwise alter the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks laid in or under any street, they may by notice in writing require the person to whom the pipes, mains, plugs, or works belong to raise, sink, or otherwise alter the situation of the same, in such manner and within such reasonable time as shall be specified in such notice, and the expenses attendant upon or connected with any such alteration shall be paid by the said local board out of the general district rates levied under this Act; and if such notice be not complied with, the said local board may make the alteration required: Provided always, that no such alteration shall be required or made which will permanently injure any such pipes, mains, plugs, or works, or prevent the water or gas from flowing as freely and conveniently as usual: Provided also, that where, under any local Act of Parliament, the expenses attendant upon or connected with the raising, sinking, or otherwise altering the situation of any water or gas pipes, mains, plugs, or other waterworks or gasworks, are or shall be directed to be borne by the person to whom such pipes or works belong, his liability in that respect shall continue, in the same manner and under the same conditions in all respects as if this Act had not been passed.

Power to require gas and water pipes to be moved.

See, as to the general district rate, sect. 87, *post*, 478.

Sect. 72 is repealed, and other provisions are substituted, by the 21 & 22 Vict. c. 98, s. 34, *ante*, 456.

Sect. 73. The said local board may, by agreement, purchase any premises for the purpose of widening, opening, enlarging, or otherwise improving any street, and any part of the premises so purchased which shall not be wanted for that purpose shall be resold at the best price that can be gotten for the same, and the proceeds of such resale shall be carried to the district fund account hereinafter mentioned.

Local board may purchase premises in order to improve streets.

By the 21 & 22 Vict. c. 98, s. 36, *post*, 468, the local board may also purchase premises for the purpose of making new streets; and, by sect. 39 of the same Act, *post*, 464, may make agreements with landowners for the construction of new public roads through their lands.

By the 29 & 30 Vict. c. 90, s. 47, *post*, 476, this section is to be construed as if the words "by agreement" had been expressly repealed by the 21 & 22 Vict. c. 98, s. 75. See that section, *post*, 475.

See, as to the district fund account, sect. 87, *post*, 478.

By the 15 & 16 Vict. c. 42, s. 13, the term "highway" in the sections of the "Public Health Act, 1848," numbered respectively 68 and 69 in the copies of the Act printed by the Queen's printers, shall mean any highway repairable by the inhabitants at large.

11 & 12 Vict. c. 63, ss. 68, 69, to apply to highways repairable by inhabitants.

By a local Act, commissioners were authorized to repair all streets in

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a town, and as often as any new streets should be laid out and effectually paved to the satisfaction of the commissioners, on the application of the owner of the soil of such street, they were empowered to declare the street to be a public highway, and thenceforth such street was to be repaired by the commissioners. They were also empowered to rate the occupiers within the town; and the Act exempted all who were so assessed from statute duty for repairs of public highways. After the passing of the local Act, but before the 5 & 6 Will. 4, c. 50, a new street was laid out by the owner of the soil, and opened and dedicated to the public; but it was never declared to be a public highway by the commissioners. Afterwards, the "Public Health Act" having been applied to the town, the local board ordered the owners of premises abutting on this street to pave it; and it was held that the street was not a highway repairable by the inhabitants at large, and that the order was valid. (*Wallington v. White*, 10 C. B., N. S. 128; 30 L. J., M. C. 209; *S. P. Willes v. Wallington*, 13 C. B., N. S. 865; 32 L. J., C. P. 86.)

Power to local board to provide for sewerage, etc., of parts of streets not being highways.

By the 21 & 22 Vict. c. 98, s. 38, the powers given to local boards of health by the sixty-ninth and seventieth sections of the "Public Health Act, 1848," to compel the sewerage, levelling, paving, flagging and channelling of streets that are not highways repairable at the public expense, and after the completion of such works to declare such streets highways repairable at the public expense, shall extend to providing the means of lighting, metalling, or making good such streets, and may be exercised in respect of the carriage-way, footway, or any part of such streets; and the said powers shall also be deemed to have extended and shall extend and be exercised in respect of any street or road of which a part was at the time of the application of the "Public Health Act, 1848," or is or may be a public footpath, or repairable at the public expense, as fully as if the whole of such street or road had been or was a highway not repairable at the public expense.

No incumbent or minister of any church, chapel, etc., liable to expenses under sect. 69 of 11 & 12 Vict. c. 63, or this section.

No incumbent or minister of any church, chapel, or place appropriated to public religious worship, which is now by law exempt from rates for the relief of the poor, shall be liable to any expenses under the sixty-ninth section of the "Public Health Act, 1848," or this section, as the owner or occupier of such church, chapel, or place, or of any churchyard or burial ground attached thereto; nor shall any such expenses be deemed to be a charge on such church, chapel, or other place, or on such churchyard or burial ground, or to subject the same to distress, execution, or other legal process; and the local board may, if they think fit, undertake any works from the expenses of which any such incumbent or minister is hereby exempted.

By the 24 & 25 Vict. c. 61, s. 16, *post*, 466, plans and sections must be deposited before the notice to execute the works can be given; and by sect. 17, *post*, 467, a form of notice is given.

Further provisions as to roads are made by the 24 & 25 Vict. c. 61, s. 26, *post*, subsect. 27.

Power to local boards to agree as to making of new public roads.

Sect. 39. It shall be lawful for any local board to agree with any persons for the making of roads for the public use through the lands and at the expense of such persons, and to agree that such roads shall become, and the same shall accordingly become, on completion, public highways maintainable and repairable at the public expense; and it shall be lawful for such board, with the consent of two-thirds of their number, to agree with such persons to pay, and accordingly to pay, any portion of the expenses of making such roads out of the funds at the disposal of such board for public improvements.

Sect. 40. It shall be lawful for any local board to agree with the pro-

proprietors of any canals, railways, or tramroads, and with any landowners or other persons willing to bear the first expense thereof, for the construction or alteration of, and accordingly to cause or permit to be constructed or altered, any bridges, viaducts, or arches, over or under any such canals, railways, or tramroads, at the expense of such persons, and at the like expense, by agreement, to purchase so much of any slopes, embankments, or other parts of such canals, railways, or tramroads, or of any adjoining lands, as may be required for the foundation and supports of such bridges, viaducts, or arches, and the approaches thereto, and to agree that such bridges, viaducts, or arches respectively, with their approaches and accessories, shall become, and the same shall accordingly become, on completion, parts of public streets or roads maintainable and repairable at the public expense; and it shall be lawful for such board, with the consent of two-thirds of their number, to agree to pay, and accordingly to pay, any portion of the expenses of such construction, alteration, and purchase out of the funds at the disposal of such board for public improvements; and it shall be lawful for any such board, with the consent of such proprietors and other persons interested, and on such terms as may be mutually agreed upon, to adopt any existing bridges, viaducts, or arches over or under any such canals, railways, or tramroads, and the approaches thereto, as public bridges, viaducts, or arches, and parts of public streets or roads maintainable and repairable at the public expense.

Sect. 41. It shall be lawful for any local board, by agreement with the trustees of any turnpike road, or with any corporation or person liable to repair any street or road, or any part thereof, or with surveyors of any bridge repaired by any county, riding, or division, to take upon themselves the maintenance, repair, cleansing, or watering of any such street or road, or any part thereof, or of any road over any county bridge, and the approaches thereto, or of any part of the said roads within their district, and to remove any turnpike gates, toll gates, or bars which may be situate within two miles from the centre of any town or place within their district, and to erect other turnpike gates, toll gates, or bars in lieu thereof, on such terms as the local board and the trustees or corporation or person or surveyor aforesaid may agree upon between themselves; provided, that in case any mortgage debt is charged upon the tolls of any such turnpike road, no agreement shall be made for the removal of any of the toll gates or bars thereon, unless with the previous consent in writing of a majority of at least two-thirds in value of the mortgagees; and that when the terms arranged shall include any annual or other payments from the local board to the trustees, then such payments may be secured on the local rates in the same manner as other charges on the rates are authorized by this Act: Provided also, that all executors, administrators, guardians, trustees, and all committees of the estates of idiots and lunatics, who as such are for the time being entitled to any money charged or secured on the tolls of any such turnpike road, may consent to any such agreement as aforesaid, as fully as if they respectively were so entitled in their own right, discharged of all trusts in respect thereof, and all executors, administrators, guardians, trustees, and committees so consenting are hereby severally indemnified for so doing.

Sect. 42. And whereas, by the seventieth section of the "Public Health Act, 1848," it is provided that no street shall become a highway, under the provisions of such section, if within one month after notice in writing shall have been first put up as therein mentioned, the proprietor of such street, or the person representing or entitled to represent such proprietor, shall, by notice in writing to the local board, object thereto; and doubts have arisen as to the effect of such provision: Be it enacted, that no such objection shall be of force unless made either by the sole proprietor, or (if more than one) by the majority in number of such pro-

### 15. *Management of Streets.*

Power to local boards, by consent, to construct public bridges, etc., or adopt as public, and improve, existing bridges, etc., over or under canals, railways, or tramroads.

Powers to local boards to enter into agreements with turnpike trustees as to repair, etc., of roads.

Objections under sect. 70 of 11 & 12 Vict. c. 63, to be made by the sole proprietor, or, if more than one, by a majority.

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Certain roads herein named not to be interfered with, except upon conditions, etc., herein named.

prietors, and in ascertaining such majority joint proprietors shall be reckoned and considered one proprietor.

See the 11 & 12 Vict. c. 63, s. 70, *ante*, 462.

Sect. 43. Notwithstanding anything contained in the "Public Health Act, 1848," or this Act, it shall not be lawful for any local board to open or in any way disturb any of the public roads or footpaths under the charge of the commissioners of the metropolis turnpike roads north of the Thames, or of the New Cross turnpike roads, or of the trustees acting in execution of the "Surrey and Sussex Roads Act, 1850," except upon the conditions and subject to the regulations hereinafter contained; that is to say,—

- (1.) The local board shall leave at the office of the commissioners or trustees of such road seven days' previous notice, containing full particulars of any works intended to be executed by them, and affecting any of such roads.
- (2.) If the general surveyor of the said commissioners or trustees directs the works to be on any particular part of such roads, the local board shall be bound to obey such directions.
- (3.) Except by the permission of the said commissioners or trustees, the traffic of any of the said roads shall not at one time be stopped or in any way hindered along more than half of its width, nor, if the half left open is of less than the clear width of fourteen feet, along more than one hundred yards in length; and no alteration shall be made in the inclination of any of the said roads of more than one foot in sixty feet.
- (4.) All works shall be done under the superintendence of the general surveyor; and all such precautions as he may direct for the protection and convenience of the public shall be taken by and at the expense of the party doing the works, and in default the said surveyor shall cause to be done in that behalf what he may think proper; and the party doing the works shall in all cases of damage occurring by reason of such works, and whether such precautions are or not taken, be answerable to the person suffering such damage, the said commissioners or trustees being hereby absolved from all liability in respect of the consequences of such works.
- (5.) The party doing the works shall, as regards every road opened or disturbed, restore the same to its original state as to surface and materials, and, in order to meet the expenses consequent upon the subsidence of materials newly filled in, shall repay to the said commissioners or trustees, on demand, such sum as they have expended in restoration of the road, not exceeding one shilling for every superficial square yard, and, so far as the works affect the same, shall make good all drainage, paving of water channels, curbs of footpaths, and other matters and things connected with the maintenance of the said roads; and on default the said surveyor may cause to be done in that behalf what he may think fit; and the said surveyor may recover the expense so incurred by him in a summary manner.

Before giving notice for paving, etc., of streets not being highways, plans and sections to be deposited with local board.

By the 24 & 25 Vict. c. 61, s. 16, before giving the notice mentioned in the sixty-ninth section of "The Public Health Act, 1848" (a) the local board shall cause plans and sections of the works intended to be executed under that section and the thirty-eighth section of "The Local Government Act, 1858" (b), to be made, under the direction of their surveyor, on a scale of not less than one inch for eighty-eight feet for a

(a) *Ante*, 461.

(b) *Ante*, 464.

horizontal plan, and on a scale of not less than one inch for ten feet for a vertical section, and, in the case of a sewer, showing the depth of such sewer below the surface of the ground; and such plans and sections shall be deposited in the office of the local board, and shall be open at all reasonable hours for the inspection of all persons interested therein during the period for which such notice is required to be given, and a reference to such plans and sections in such notice shall be held sufficient without requiring any copy of such plans and sections to be annexed to such notice.

16. *Regulation of Buildings.*

Sect. 17. The form of notice in the schedule (A.) to this Act annexed (see the form, *post*), or to the like effect, may be used for any of the purposes of the sixty-ninth section of "The Public Health Act, 1848," and of the thirty-eighth section of "The Local Government Act, 1858," and of this Act, for which such form is applicable, and such form shall accordingly, to all intents, be deemed sufficient for such purposes.

Form of notice.

A notice to pave given under sect. 69 of the Act of 1848 before the passing of this Act, did not specify the breadth to be paved, or any of the particulars necessary to enable the party to do the work required, but contained a statement at the foot of it that particulars of the necessary works might be obtained from the borough surveyor's office; and it appeared that plans and specifications were lodged at that office and were there seen by the party on whom the notice had been served. In the absence of any evidence that such plans and specifications did not give ample information of the work to be done, the notice was held to be sufficient. (*Bayley v. Wilkinson*, 16 C. B., N. S. 161; 33 L. J., M. C. 161.)

16. REGULATION OF BUILDINGS.

By the 21 & 22 Vict. c. 98, s. 35, when any house or building has been taken down, in order to be rebuilt or altered, the local board may prescribe the line in which any house or building to be hereafter built shall be erected, and the same shall be erected in accordance therewith; and the local board shall pay or tender compensation to the owner or other person immediately interested in such house or building for any loss or damage he may sustain in consequence of his house or building being set back, the amount of such compensation, in case of dispute, to be settled in the same manner as compensation for land to be taken under the provisions of "The Lands Clauses Consolidation Act, 1845," is directed to be settled; and all the provisions of the said last-mentioned Act relating to the purchase of lands shall apply to the payment made for such loss or damage as if it were a purchase under such Act.

When houses taken down, local board may prescribe line in which same shall be rebuilt.

See further powers as to buildings in the 24 & 25 Vict. c. 61, s. 28, *post*, 468.

Certain persons were lessees for ninety-nine years of a piece of land within the jurisdiction of a local board. The land leased was higher than the street, and was bounded from the street by a wall. The lessees erected a chapel on the land, and in order to approach the chapel steps were placed on the land. The chapel was erected before the local board was in existence; but the steps and boundary wall were completed afterwards. After a resolution of the board and a notice to the lessees, the local board removed the steps and the boundary wall, and refused compensation. The Court of Exchequer, however, held that the board was not justified under this section; and that, if any bye-law authorized the Act, such bye-law would be unreasonable. (*Brown v. Holyhead Local Board*, 1 H. & C. 601; 32 L. J., Ex. 25.)

This section only applies to buildings that have been taken down without any previous approval of a plan, etc., for their re-erection. Where a town council (being also the local board) of a borough had appointed,



### 18. *Supply of Water.*

under powers contained in their local Act, a "building and improvement committee," whose duty it was to execute the powers delegated to them by the town council under the preceding section, and the committee had approved a plan for the rebuilding of a manufactory, it was held that after such approval the town council were not at liberty to give a notice under this section requiring the manufactory to be rebuilt on a line thirteen feet behind the mark on the plan approved by the committee; and an injunction was granted and afterwards made perpetual to restrain the town council from interfering in any way with the erection of the building in accordance with the plan approved. (*Stee v. The Mayor, etc., of Bradford*, 4 Giff. 262.)

See the principal sections of the "Lands Clauses Consolidation Act, 1845" (8 Vict. c. 18), *ante*, 185.

Local board may purchase premises for purpose of making new streets.

Sect. 36. The local board may, with the sanction of one of her Majesty's principal secretaries of state, purchase any premises for the purpose of making new streets, and shall have with regard to premises so purchased all the powers given by the seventy-third section of the "Public Health Act, 1848."

See the seventy-third section of the "Public Health Act, 1848," *ante*, 463. By sect. 39, *ante*, 464, the local board may make agreements with landowners for the making of new public roads through their land.

No house to be brought forward without consent of local board.

By the 24 & 25 Vict. c. 61, s. 28, it shall not be lawful at any time or times hereafter, within the district of any local board, to bring forward any house or building forming part of any street, or any part thereof, beyond the front wall of the house or building on either side thereof, nor to build any addition thereto beyond the front of such house or building on either side of the same as aforesaid, without the previous consent of such local board.

Whether or not a house or building forms part of a street is a question of fact. (*Reg. v. Fullford, Leigh & Cave*, C. C. 403; 33 L. J., M. C. 122.) Houses form part of a street when they are so contiguous as substantially to form a continuous row; and a set of detached houses, not being in a continuous line, but some facing one way and some another, and having no appearance of uniformity, is not a street. (*Ib.*)

### 17. PUBLIC WALKS.

Local board may provide places of public recreation, etc.

By the 11 & 12 Vict. c. 63, s. 74, the local board of health with the approval of the said general board, may provide, maintain, lay out, plant, and improve premises for the purpose of being used as public walks or pleasure grounds, and support or contribute towards any premises provided for such purposes by any person whomsoever.

### 18. SUPPLY OF WATER.

Local board to provide sufficient supplies of water, and may erect waterworks, etc.

By the 11 & 12 Vict. c. 63, s. 75, the local board of health may provide their district with such a supply of water as may be proper and sufficient for the purposes of this Act and for private use to the extent required by this Act; and for those purposes or any of them, the said local board may from time to time, with the approval of the general board of health, contract with any person whomsoever, or purchase, take upon lease, hire, construct, lay down, maintain such waterworks, and do and execute all such works, matters, and things as shall be necessary and proper; and any waterworks company may contract with the local board of health to supply water for the purposes of this Act in any manner whatsoever, or may sell and dispose of or lease their waterworks to any local board of health willing to take the same; and the said local board may provide and keep in any waterworks constructed or laid down by them under the powers of this Act a supply of pure and

In case of waterworks construct-

wholesome water, and the water so supplied may be constantly laid on at such pressure as will carry the same to the top story of the highest dwelling-house within the district supplied: Provided always, that before constructing or laying down any waterworks under the powers of this Act within any limits within, for, or in respect of which any waterworks company shall have been established for supplying water, the said local board shall give notice in writing to every waterworks company within whose limits the said local board may be desirous of laying on or supplying water, stating the purposes for and (as far as may be practicable) the extent to which water is required by the said local board; and it shall not be lawful for the said local board to construct or lay down any waterworks within such limits, if and so long as any such company shall be able and willing to lay on water proper and sufficient for all reasonable purposes for which it is required by the said local board, and upon such terms as shall be certified to be reasonable by the general board of health, after inquiry and report by a superintending inspector in this behalf, or (in case such company shall be dissatisfied with such certificate) upon such terms as shall be settled by arbitration in the manner provided by this Act; and in case any difference shall arise as to whether the water which any such company is able and willing to supply or lay on is proper and sufficient for the purposes for which it is required by the said local board, or whether the purposes for which it is required are reasonable, the same shall be settled by arbitration in the manner provided by this Act.

See, as to the powers of the superintending inspector upon an inquiry under this section, sect. 121, *post*, 499.

See the further powers as to water supply given in respect of the supply of water by the 21 & 22 Vict. c. 98, ss. 51–53, *post*, 471, and the 24 & 25 Vict. c. 61, s. 20, *post*, 472.

As to the mode of proceeding in arbitrations, see sects. 125–128, *post*, 503, 504.

Sect. 76. If upon the report of the surveyor it appear to the local board of health that any house is without a proper supply of water, and that such a supply of water can be furnished thereto at a rate not exceeding twopence per week, the said local board shall give notice in writing to the occupier, requiring him, within a time to be specified therein, to obtain such supply, and to do all such works as may be necessary for that purpose; and if such notice be not complied with the said local board may, if they shall think fit, do such works, and obtain such supply accordingly, and make and levy water-rates upon the premises, not exceeding in the whole the rate of twopence per week, in manner hereinafter provided, as if the owner or occupier of the premises had demanded a supply of water, and were willing to pay water-rates for the same; and the expenses incurred by them in doing such works as last aforesaid shall be private improvement expenses, and be recoverable as such in the manner hereinafter provided.

By the 21 & 22 Vict. c. 98, s. 51, *post*, 471, the powers given by this section are extended to houses to which a supply of water can be provided at an expense not exceeding the water-rate authorized by this Act or any local Act in force in the district; and the notice is to be served on the owner instead of the occupier, and the expenses are made recoverable from the owner.

See, as to the mode of levying water-rates, sects. 93–96, *post*, 481, 482.

By the 29 & 30 Vict. c. 90, s. 50, *post*, 472, these expenses may be recovered in a summary manner.

Sect. 77. The local board of health may, if they shall think fit, supply water from any waterworks purchased or constructed by them under this Act to any public baths or washhouses, or for trading or manu-

### 18. Supply of Water.

ed by local board, the water may be kept constantly under pressure.

Local board not to construct works, etc., if any waterworks company within their district be able and willing to supply water upon terms.

Local board may require that houses be supplied with water, etc., in certain cases.

Water for public baths, or trading or manufacturing purposes.

18. *Supply of Water.*

Maintenance and construction of public cisterns for gratuitous use.

facturing purposes, upon such terms and conditions as may be agreed upon between the said local board and the persons desirous of being so supplied.

Sect. 78. The local board of health may cause all existing public cisterns, pumps, wells, reservoirs, conduits, aqueducts, and works used for the gratuitous supply of water to the inhabitants to be continued, maintained, and plentifully supplied with water, or they may substitute, continue, maintain, and plentifully supply with water other such works equally convenient; and the said local board may, if they shall think fit, construct any number of new cisterns, pumps, wells, conduits, and works for the gratuitous supply of any public baths or washhouses established otherwise than for private profit or supported out of any poor or borough rates.

Penalty for injuring water-works, diverting streams, or wasting water.

Sect. 79. Whosoever shall wilfully or carelessly break, injure, or open any lock, cock, waste pipe, or waterworks belonging to or under the management or control of the local board of health, or constructed, continued, or maintained under this Act, in any parish or place in which there shall be no local board of health, or shall unlawfully flush, draw off, divert, or take water from any waterworks belonging to or under the management or control of the said local board, or so constructed, continued, or maintained in any such parish or place, or from any waters or streams by which such waterworks are supplied, or shall wilfully or negligently waste or cause to be wasted any water with which he is supplied by the said local board, shall for every such offence forfeit a sum not exceeding five pounds, and a further penalty of twenty shillings for each day whilst the offence is continued after written notice in that behalf, which penalties shall be paid to the said local board, or in the case of a parish or place in which there shall be no local board of health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place: Provided always, that nothing herein contained shall prevent the owner or occupier of any premises through or by which any streams may flow from using the same as they would have been entitled to do if this Act had not been passed.

See, as to the mode of recovering penalties, sects. 129-134, *post*, 505-507.

Penalties on persons for causing water in reservoirs to be fouled;

Sect. 80. Whosoever shall bathe in any stream, reservoir, conduit, aqueduct, or other waterworks belonging to or under the management or control of the local board of health, or in any reservoir, conduit, aqueduct, or other waterworks constructed, continued, or maintained under this Act in any parish or place in which there shall be no local board of health, or shall wash, cleanse, throw, or cause to enter therein any animal, rubbish, filth, stuff, or thing of any kind whatsoever, or shall cause or permit or suffer to run or be brought therein the water of any sink, sewer, drain, engine, or boiler, or other filthy, unwholesome, or improper water, or shall do anything whatsoever whereby any water belonging to the said local board or under their management or control, or whereby any water of or contained in any such reservoir, conduit, aqueduct, or other waterworks so constructed, continued, or maintained in any such parish or place as aforesaid shall be fouled, shall for every such offence forfeit a sum not exceeding five pounds, and a further sum of twenty shillings for each day whilst the offence is continued, after written notice in that behalf; which penalties shall be paid to the said local board, or, in the case of a parish or place in which there shall be no local board of health, to the churchwardens and overseers of the poor, to be by them applied in aid of the rate for the relief of the poor of such parish or place; and whosoever, being proprietor of any gasworks, or being engaged or employed in the manufacture or supply of gas, causes or suffers to be brought or to flow into any stream, reservoir, conduit,

and on proprietors of gas works, etc.

aqueduct, or waterworks belonging to or under the management or control of the said local board, or into any drain or pipe communicating therewith, any washing or other substance produced in the manufacture or supply of gas, or shall wilfully do any act connected with the manufacture or supply of gas whereby the water in any such stream, reservoir, aqueduct, or waterworks is fouled, shall forfeit to the said local board for every such offence the sum of two hundred pounds, and, after the expiration of twenty-four hours' notice in writing from them in this behalf, a further sum of twenty pounds for every day during which the offence is continued, or during the continuance of the act whereby the water is fouled; and every such penalty shall be recoverable, with full costs of suit, by action of debt; and if any water supplied by, belonging to, or under the management or control of the said local board be fouled in any manner by the gas of any such proprietor or person as last aforesaid, he shall forfeit to the local board for every such offence a sum not exceeding twenty pounds, and a further sum not exceeding ten pounds for every day whilst the offence is continued after the expiration of twenty-hours' notice in writing from the said local board in this behalf; and for the purpose of ascertaining whether such water is fouled by the gas of any such proprietor or person, the said local board may lay open and examine any pipes, conduits, and works from which the gas is supposed to escape; provided that before beginning so to do twenty-four hours' notice in writing be given to the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, of the time at which the examination is intended to be made; and if upon such examination it appear that the water has been fouled by the gas proceeding from or contained in the pipes, conduits, or works examined, the expenses of the examination shall be paid and borne by the person to whom such pipes, conduits, or works belong, or under whose management or control they may be, and be recoverable from him in the summary manner hereinafter provided; but if it appear that the water has not been so fouled, then such expenses, and all damages occasioned by the examination, shall be paid by the said local board out of the general district rates levied under this Act, and be recoverable from them in the summary manner hereinafter provided.

See, as to the recovery of penalties and expenses to be recovered summarily, sects. 129-134, *post*, 505-507; and as to the general district rate, sect. 87, *post*, 478.

By the 21 & 22 Vict. c. 98, s. 51, the powers given to local boards by the seventy-sixth section of the "Public Health Act, 1848," shall extend to any house within their district to which a supply of water can be provided at an expense not exceeding the water-rate authorized by the said Act or any local Act in force in the district, and notices under that section shall be served on owners of houses so supplied instead of occupiers, and expenses incurred under that section shall be recoverable from such owners.

By the 29 & 30 Vict. c. 90, s. 50, *post*, 472, these expenses may be recovered in a summary manner.

See the 11 & 12 Vict. c. 63, s. 76, *ante*, 469.

Sect. 52. Where the local board supply water to their district they shall have the same power for carrying water mains within the district as they have for carrying sewers by the law in force for the time being.

See the 11 & 12 Vict. c. 63, s. 45, *ante*, 446.

Sect. 53. It shall be lawful for any local board of health absolutely to purchase, and for the directors for the time being of any waterworks company or market company, by and with the authority of three-fifths

## 18. Supply of Water.

Powers of sect. 76 of 11 & 12 Vict. c. 63, as to water supply extended by this Act.

Power of carrying water mains.

Powers to directors of waterworks or market company to sell

### 21. *Burial Grounds, etc.*

works, etc., to  
local boards.

of the shareholders for the time being in such company who may be present, either personally or by proxy, at some general meeting of the company specially convened for the purpose, to sell, convey, and transfer unto any local board of health, upon such terms as shall be mutually agreed upon between the company and the local board, all the rights, powers, and privileges, and all or any of the lands and premises, works, matters, and things, which at the time of such purchase shall be the property of the company, but subject to all mortgages, contracts, or liabilities to which the same shall be then subject.

Local boards  
may make agree-  
ments for terms  
of water supply  
in certain cases.

By the 24 & 25 Vict. c. 61, s. 20, in districts where no water companies are established by Act of Parliament all local boards may make agreements for the supply of water to persons on such terms as may be agreed upon between the local board and the persons receiving such supply, and shall have the same powers for recovering water-rents accruing under such agreements as they have for the recovery of water-rates by the law in force for the time being.

Recovery of cer-  
tain expenses of  
water supply.

By the 29 & 30 Vict. c. 90, s. 50, all expenses incurred by a sewers authority or local board in giving a supply of water to premises under the provisions of the seventy-sixth section of the "Public Health Act, 1848," or the fifty-first section of the "Local Government Act, 1858," and recoverable from the owners of the premises supplied, may be recovered in a summary manner.

### 19. LIGHTING.

Local board of  
health may con-  
tract for lighting.

By the 12 & 13 Vict. c. 94, s. 8, the said local boards constituted under the said "Public Health Act" (a) may contract, for any period not exceeding three years at any one time, with any company or person for the supply of gas or oil, or other means of lighting the streets, roads, and other open places, markets and public buildings within their respective districts, and may provide such lamps, lamp posts, and other materials and apparatus as such local boards respectively may think necessary for lighting the same; and the expenses incurred by any such local board in so doing shall be defrayed out of the general [or special] (b) district rates [as the nature of the case may require], levied under the said "Public Health Act" (a).

### 20. RECEPTION HOUSES FOR THE DEAD.

Power to provide  
premises for the  
reception of the  
dead previously  
to interment.

By the 11 & 12 Vict. c. 63, s. 81, the local board of health may, if they shall think fit, provide, fit up, and make bye-laws with respect to the management and charges for the use of rooms or premises in which corpses may be received, and decently and carefully kept previously to interment; and the said local board may, upon proper application, and subject to such regulations and at such rates and charges as shall be prescribed by any such bye-laws, make all necessary arrangements for the decent and economical interment of any corpse which may have been received into any rooms or premises so provided in pursuance of this enactment.

See as to the making of bye-laws, ss. 115, 116, *post*, 492.

### 21. BURIAL GROUNDS, ETC.

Burial grounds,  
etc., dangerous  
to health may be  
prohibited.

By the 11 & 12 Vict. c. 63, s. 82, if, upon the representation of the local board of health, and after inquiry and report by a superintending inspector, notified to the lord bishop of the diocese, and made, notified,

(a) That is, the "Public Health Act, 1848," *ante*, 416.

(b) Special district rates can no

longer be levied. See the 21 & 22 Vict. c. 98, s. 54, *post*, 484.

and published in manner hereinbefore directed with respect to the inquiry and report of superintending inspectors previously to the constitution of a district under this Act, and after inquiry by such other ways and means as the general board of health may think fit to direct, the said general board, shall certify (such certificate to be published in the *London Gazette* and in some one or more of the public newspapers usually circulated within the district), that any burial ground situate within any district to which this Act is applied is in such a state as to be dangerous to the health of persons living in the neighbourhood thereof, or that any church or other place of public worship within any such district is dangerous to the health of persons frequenting the same by reason of the surcharged state of the vaults or graves within the walls of or underneath the same, and that sufficient means of interment exist within a convenient distance from such burial ground, church, or place of public worship, it shall not be lawful, after a time to be named in such certificate, to bury or permit or suffer to be buried any further corpses or coffins in, within, or under the ground, church, or place of worship to which the certificate relates, except in so far as may be allowed by such certificate; and whosoever, after notice of such certificate, buries, or causes, permits, or suffers to be buried, any corpse or coffin contrary to this enactment, shall for every such offence be liable to a penalty of twenty pounds.

See, as to the recovery and application of penalties, sects. 129–134, *post*, 505–507.

See, as to the powers of the superintending inspector upon an inquiry under this section, sect. 121, *post*, 499.

See the 21 & 22 Vict. c. 98, s. 49, *infra*, by which the local board is constituted the burial board of the district.

Sect. 83. No vault or grave shall be constructed or made within the walls of or underneath any church or other place of public worship built in any district after the passing of this Act, and no burial ground shall be made or formed within any district after the passing of this Act, without the consent of the general board of health first had and obtained, unless the same be made or formed upon land purchased or authorized by Parliament to be appropriated for the purpose of being used as a burial ground before the passing of this Act; and whosoever shall bury, or cause, or permit, or suffer to be buried, any corpse or coffin in any vault, grave, or burial ground constructed, made, or formed contrary to this enactment, shall for every such offence be liable to a penalty not exceeding fifty pounds, which may be recovered by any person, with full costs of suit, in an action of debt.

21. *Burial Grounds, etc.*

As to interments within churches or burial grounds newly erected or formed.

By the 21 & 22 Vict. c. 98, s. 49, in any district where a vestry of any one or more parish or place comprised therein having a known or defined boundary adopts the Act passed in the twentieth and twenty-first year of the reign of her present Majesty, chapter eighty-one, and intitled “An Act to amend the Burial Acts,” the local board may, at the option of such vestry, be the burial board for the execution of the said Act within such parish or parishes, place or places, so adopting the Act as aforesaid, and shall thereupon have all the powers, duties, rights, and obligations of a burial board under the said Act; and all expenses incurred by the local board in carrying into execution the powers given to them by the said Act shall be defrayed out of rates to be levied on such parish or parishes, place or places, so adopting the Act as aforesaid, in the same manner as general district rates are to be levied under the provisions of this Act; and all receipts by them, by reason of the exercise of such powers, shall be carried to the credit of such parish or parishes, place or places so adopting the Act as aforesaid: Provided nevertheless, that in case the parish or parishes, place or places comprised in such district so adopting the Act as aforesaid shall have been

Local board to be burial board of district, though the burial ground be provided for parts of the district only.

22. Purchase,  
etc. of Lands.

declared a ward or wards for the election of members of the local board, and members shall have been elected by and for such ward or wards, the last-mentioned members shall form the burial board for such parish or parishes, place or places so formed into a ward or wards as aforesaid, instead of the members of the said local board, and shall have all the like powers, duties, rights, and obligations of the burial board under said Act of the twentieth and twenty-first years of the reign of her present Majesty, chapter eighty-one.

See the 20 & 21 Vict. c. 81, tit. "*Cemetery*," Vol. I.

See as to the mode of levying general district rates, the 11 & 12 Vict. c. 63, ss. 87-106, *post*, 478 *et seq.* And see, as to the mode of providing for the expenses incurred in the exercise of the powers given by this section, the 23 & 24 Vict. c. 64, tit. "*Cemetery*," Vol. I.

By the 24 & 25 Vict. c. 61, s. 21, *infra*, local boards may repair fences surrounding burial grounds.

Local boards of health may repair fences surrounding burial grounds.

By the 24 & 25 Vict. c. 61, s. 21, all local boards of health constituted burial boards may from time to time repair and uphold the fences surrounding any burial ground which shall have been discontinued as such within their jurisdiction, or take down such fences and substitute others in lieu thereof, and shall from time to time take the necessary steps for preventing the desecration of such burial grounds, and placing them in a proper sanitary condition; and where such burial boards are a local board of health, they may from time to time pass bye-laws for the preservation and regulation of all burial grounds within their limits, and the expense of carrying this section into execution may be defrayed out of any rates authorized to be levied by any local board constituted a burial board.

See the 21 & 22 Vict. c. 98, s. 49, *ante*, 473.

Powers to burial boards in certain cases to transfer their powers to local boards.

By the 29 & 30 Vict. c. 90, s. 44, when the district of a burial board is conterminous with the district of a local board of health, the burial board may, by resolution of the vestry, and by agreement of the burial board and local board, transfer to the local board all their estate, property, rights, powers, duties, and liabilities, as if the local board had been appointed a burial board by order in council under the fourth section of the Act of the session of the twentieth and twenty-first years of the reign of her present Majesty, chapter eighty-one.

## 22. PURCHASE, ETC. OF LANDS.

Power to local boards to purchase lands, etc. under 8 & 9 Vict. c. 18.

By the 11 & 12 Vict. c. 63, s. 84, the local board of health, by agreement, may purchase, or take upon lease, sell or exchange, any lands or premises for the purposes of this Act; [and the "*Lands Clauses Consolidation Act, 1845*," except the parts and enactments of that Act with respect to the purchase and taking of lands otherwise than by agreement, and with respect to the recovery of forfeitures, penalties, and costs, and with respect to lands acquired by the promoters of the undertaking, but which shall not be wanted for the purposes thereof, shall, in so far as the same is consistent with this Act, be incorporated with this Act;] and for the purposes of this Act the expression "*the promoters of the undertaking*," wherever used in the said "*Lands Clauses Consolidation Act*," shall mean the local board of health mentioned in this Act; and all lands and premises which shall be purchased, hired, or taken, on lease by the local board of health of any non-corporate district shall be conveyed, demised, and assured to such local board and their successors, in trust for the purposes of this Act, and shall be accepted, taken, and held by them as a body corporate.

So much of this section as incorporates the "*Lands Clauses Consolidation Act, 1845*," is repealed, and other provisions are substituted by the 21 & 22 Vict. c. 98, s. 75, *post*, 475.

By the 29 & 30 Vict. c. 93, s. 47, *post*, 476, this section is to be construed as if the words "by agreement" had been expressly repealed by the 21 & 22 Vict. c. 98, s. 75, *infra*.

22. *Purchase, etc. of Lands.*

By the 21 & 22 Vict. c. 98, s. 75, so much of the eighty-fourth section of the "Public Health Act, 1848," as relates to the incorporation of the "Lands Clauses Consolidation Act, 1845," shall be repealed, and the following regulations shall be observed with respect to the purchase of land by local boards for the purposes of this Act; (that is to say,)

Regulation as to the purchase of land.

(1.) "The Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act, except the provisions relating to access to the special Act:

(2.) The local board, before putting in force any of the powers of the said "Lands Clauses Consolidation Act" with respect to the purchase and taking of land otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November in some newspaper circulated in the district or some part of the district within which such local board has jurisdiction is situate, an advertisement describing shortly the nature of the undertaking in respect of which the land is proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of land that they require; and shall further in the month of December

Publication of notices.

Serve a notice in manner hereinafter mentioned on every owner or reputed owner, lessee or reputed lessee and occupier of such land, defining in each case the particular land intended to be taken, and requiring an answer, stating whether the person so served assents, dissents, or is neuter in respect of taking such land; such notice to be served

Service of notices.

By delivery of the same personally on the party required to be served, or, if such party is absent abroad, to his agent; or

By leaving the same at the usual or last known place of abode of such party as aforesaid; or

By forwarding the same by post in a registered letter addressed to the usual or last known place of abode of such party:

(3.) Upon compliance with the provisions herein-before contained with respect to advertisements and notices, the local board may, if they shall think fit, present a petition under their seal to one of her Majesty's principal secretaries of state; the petition shall state the land intended to be taken, and the purposes for which it is required, and the names of the owners, lessees, and occupiers of land who have assented, dissented, or are neuter in respect of the taking such land, or who have returned no answer to the notices; it shall pray that the local board may, with reference to such land, be allowed to put in force the powers of the said "Lands Clauses Consolidation Acts" with respect to the purchase and taking of land otherwise than by agreement, and such prayer shall be supported by such evidence as the secretary of state requires.

Power to local board to petition secretary of state upon matters.

(4.) Upon the receipt of such petition, and upon due proof of the proper advertisements having been published and notices served, the secretary of state shall take such petition into consideration, and may either dismiss the same, or direct an inquiry in the district in which the land is situate, or otherwise inquire as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made in the district, after such notice as may be directed by the secretary of state, no provisional order shall be made affecting any land without the consent of the owners, lessees, and occupiers thereof.

Secretary of state may direct inquiry.



22. *Purchase, etc. of Lands.*

And may make provisional order.

No provisional order valid until confirmed by Parliament.

Costs how to be defrayed.

(5.) After the completion of the inquiry as last aforesaid, the secretary of state may, by provisional order, empower the local board to put in force with reference to the land referred to in such order the powers of the said "Lands Clauses Consolidation Act" with respect to the purchase and taking of land otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as he may think fit, and it shall be the duty of the local board to serve a copy of any order so made in the manner and upon the person in which and upon whom notices in respect of such land are hereinbefore required to be served.

(6.) No provisional order so made shall be of any validity unless the same has been confirmed by Act of Parliament, and it shall be lawful for the secretary of state as soon as conveniently may be to obtain such confirmation, and the Act confirming such order shall be deemed to be a public general Act of Parliament.

(7.) All costs, charges, and expenses incurred by the said secretary of state in relation to any such provisional order as last aforesaid shall, to such amount as the commissioners of her Majesty's treasury think proper to direct, become a charge upon the general district rates levied in the district to which such order relates, and be repaid to the said commissioners of her Majesty's treasury by annual instalments not exceeding five, together with interest after the yearly rate of five pounds in the hundred, to be computed from the date of any such last-mentioned order, upon so much of the principal sum due in respect of the said costs, charges, and expenses as may from time to time remain unpaid.

See the "Lands Clauses Consolidation Act," *ante*, 185. And see the 24 & 25 Vict. c. 61, s. 18, *post*, subsect. 33.

By the 24 & 25 Vict. c. 61, s. 27, *post*, subsect. 33, the provisions of this section as to costs are extended to all provisional orders made under this Act.

A provisional order not confirmed cannot be brought up by *certiorari* for the purpose of being quashed. (*Frewen v. Hastings Local Board*, 34 *L. J.*, *Q. B.* 159.)

See the 29 & 30 Vict. c. 90, s. 47, *infra*.

Interpretation of "special Act" in construing 8 & 9 Vict. c. 18, as to provisional orders.

By the 24 & 25 Vict. c. 61, s. 18, in the construction of the "Lands Clauses Consolidation Act, 1845," for the purposes of any provisional order under the "Local Government Act, 1858," (a) conferring powers for the taking of land otherwise than by agreement, the term "special Act" shall mean the Act confirming such order, and "the date of the passing of the special Act" shall mean the date of the passing of the Act confirming such order.

Powers of local boards with respect to land purchased under 21 & 22 Vict. c. 98.

Sect. 22. Local boards shall have the same powers with regard to any lands purchased by them under or for the purposes of the "Local Government Act, 1858," or any Act incorporated therewith, which they now have with regard to lands purchased for the purpose of making or enlarging streets under the powers of the said Act.

See these powers in sect. 38 *et seq.*, *ante*, 464.

Extent of authority to make provisional orders respecting land under sect. 75 of 21 & 22 Vict. c. 98.

By the 29 & 30 Vict. c. 90, s. 47, the authority conferred on one of her Majesty's principal secretaries of state by section seventy-five of the "Local Government Act, 1858," to empower by provisional order a local board to put in force, with reference to the land referred to in such order, the powers of the "Lands Clauses Consolidation Act, 1845," with respect to the purchase and taking of lands otherwise than by agreement, shall extend and apply, and shall be deemed to have always extended and applied, to every case in which, by the "Public Health Act, 1848," and

(a) See sect. 75, *ante*, 475.

the "Local Government Act, 1858," or either of them, or any Act extending or amending those Acts, or either of them, a local board are authorized to purchase, provide, use, or take lands or premises for any of the purposes of the said Acts or either of them, or of any such Act as aforesaid; and sections seventy-three and eighty-four of the "Public Health Act, 1848," shall be construed as if the words "by agreement" therein respectively used had been expressly repealed by section seventy-five of the "Local Government Act, 1858."

23. *Contracts.*

## 23. CONTRACTS.

By the 11 & 12 Vict. c. 63, s. 85, the local board of health may enter into all such contracts as may be necessary for carrying this Act into execution; and every such contract whereof the value or amount shall exceed ten pounds shall be in writing, and (in the case of a non-corporate district) sealed with the seal of the local board by whom the same is entered into, and signed by five or more members thereof, and (in the case of a corporate district) sealed with the common seal, and shall specify the work, materials, matters, or things to be furnished, had, or done, the price to be paid, and the time or times within which the contract is to be performed, and shall fix and specify some pecuniary penalty to be paid in case the terms of the contract are not duly performed; and every contract so entered into, and duly executed by the other parties thereto, shall be binding on the local board by whom the same is executed, and their successors, and upon all other parties thereto, and their executors, administrators, successors, or assigns, to all intents and purposes: Provided always, that the said local board may compound with any contractor or other person in respect of any penalty incurred by reason of the non-performance of any contract entered into as aforesaid, whether such penalty be mentioned in any such contract, or in any bond or otherwise, for such sums of money or other recompense as to such local board may seem proper: Provided also, that before contracting for the execution of any works under the provisions of this Act, the said local board shall obtain from the surveyor an estimate in writing, as well of the probable expense of executing the work in a substantial manner as of the annual expense of repairing the same; also a report as to the most advantageous mode of contracting, that is to say, whether by contracting only for the execution of the work, or for executing and also maintaining the same in repair during a term of years or otherwise: Provided also, that before any contract of the value or amount of one hundred pounds or upwards is entered into by the said local board, ten days' public notice at the least shall be given, expressing the nature and purpose thereof, and inviting tenders for the execution of the same; and the said local board shall require and take sufficient security for the due performance of the same.

Contracts by  
local board.

Composition or  
penalties in  
respect of breach  
of contracts.

Estimates to be  
made before  
commencing  
works.

As to contracts  
above the value  
of £100.

The contract will be binding on the local board, although the provisions as to specifying the work, etc., are not complied with, those provisions being only directory, and not conditions precedent to the right to contract with third parties. (*Nowell v. The Mayor, etc., of Worcester*, 9 *Exch.* 457; 23 *L. J.*, *Exch.* 139. And see *Cunningham v. Wolverhampton Local Board*, *ante*, 462.) But in the case of a non-corporate district, the contract must be sealed with the seal of the board, and signed by five or more members, or the contractor will not be able to enforce it against the board. (*Frend v. Dennett*, 4 *C. B.*, *N. S.* 576; 27 *L. J.*, *C. P.* 314. See also the same case in *Chancery* 5 *L. T.*, *N. S.* 73, where *Wood*, V.C., gave a similar decision.) Even where there is a contract complying with the provisions of this section, the board will not be liable for any extra work not contracted for by deed. (*Rutledge v. Farnham Local Board*, 2 *F. & F.* 406.)

A local board being indebted to a contractor in the sum of £1083. 16s. 8d. for works necessary for carrying the Act into execution in the district,

## 24. Rates.

agreed on the 12th July, 1856, to pay £1000 in full satisfaction of the sum due, and to consent to a judge's order for immediate judgment for that sum, with interest and costs, and that the same should be paid on the 27th December, 1856; and it was held that they had power under this section to enter into such an agreement. (*Reg. v. Rotherham Local Board*, 8 *El. & Bl.* 906; 27 *L. J.*, *Q. B.* 156.) Where a contract for doing repairs to a street which the adjoining owners, after notice served upon them, had refused to perform, contained a stipulation that the contractor should be paid for the work when and as the money was collected from the owners, and, owing to the notice served on the owners being informal, the board were unable to collect from them the funds for defraying the expenses of the works, it was held that there was an implied undertaking on the part of the board to do all things necessary to enable them to fulfil the contract, and that their inability, by reason of the defective notice, to collect the necessary funds, was no answer to an action by the contractor to recover the cost of the works. (*Worthington v. Sudlow*, 2 *B. & S.* 508; 31 *L. J.*, *Q. B.* 131.)

The members of a local board are not individually liable upon orders given by and for work done for the local board. Where the instructions to the plaintiff were given, and the opposition to a gas bill was carried on by the local board, it was held that the members were not individually liable to the plaintiff for his expenses as a witness before a parliamentary committee in opposition to the bill. (*Bailey v. Cuckson*, 7 *W. R.* 16.)

## 24. RATES.

The 11 & 12 Vict. c. 63, s. 86, empowering the board to make and levy special district rates, is repealed by the 21 & 22 Vict. c. 98, s. 54, *post*, 484, which, however, provides that all debts incurred or contracts or engagements entered into by or to any board previous to the passing of that Act shall be enforced, and all powers of raising money by rates, etc., for satisfying such debts, etc., shall be exercised, as if that Act had not been passed. See also the 24 & 25 Vict. c. 61, ss. 12, 13, *post*, 487.

District fund  
account to be  
kept.

General district  
rate.

Sect. 87. The treasurer shall keep a separate account, to be called "the district fund account," and the moneys carried to such account under the directions of this Act shall be applied by the local board of health in defraying such of the expenses incurred or to be incurred by the said local board in carrying this Act into execution, and not otherwise expressly provided for, as they may think proper; and the said local board shall from time to time, when and as often as occasion may require, make and levy, in addition to any other rate, a rate or rates to be called "general district rates," for defraying such expenses as are charged upon that rate by this Act, and such other expenses of executing this Act in any district as are not provided for by any other rate, or defrayed out of the said district fund account.

See sect. 59, *ante*, 455, sect. 73, *ante*, 463, and sect. 133, and the 21 & 22 Vict. c. 98, ss. 47, 67, *post*, 506, 511, in which sums are directed to be carried to the district fund account.

See, as to expenses specially charged upon the general district rate, sects. 11, 30, 37, 40, 42, 57, 58, 71, and 80, *ante*, and sect. 144, and the 21 & 22 Vict. c. 98, ss. 47, 60, *post*, and s. 75, *ante*.

Sect. 88, which relates to the mode of assessing property to the general district rate, is repealed and other provisions are substituted by the 21 & 22 Vict. c. 98, s. 55, *post*, 484.

Rates may be  
prospective or  
retrospective.

Sect. 89. The local board of health may make and levy the said [special and] general district rates, or any [or either] of them, prospectively in order to raise money for the payment of future charges and expenses, or retrospectively in order to raise money for the payment of charges and expenses which may have been incurred at any time within

six months before the making of the rate ; and if at the time of making any general [or special] district rate any premises in respect of which the rate may be made are unoccupied, such premises shall be included in the rate, but the rate shall not be charged upon any person in respect of the same whilst they continued to be unoccupied ; and if any such premises are afterwards occupied during any part of the period for which the rate was made, and before the same shall have been fully paid, the name of the incoming tenant shall be inserted in the rate, and thereupon so much of the rate as at the commencement of his tenancy may be in proportion to the remainder of the said period shall be collected, recovered, and paid in the same manner in all respects as if the premises had been occupied at the time when the rate was made ; and if any owner or occupier assessed or liable to any such rate cease to be owner or occupier of the premises in respect whereof he is so assessed or liable, before the end of the period for which the rate was made, and before the same is fully paid off, he shall be liable to pay only such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier ; and in every such case, if any person afterwards become owner or occupier of the premises during part of the said period, he shall pay such part of the rate as shall be in proportion to the time during which he continues to be such owner or occupier, and the same shall be recovered from him in the same manner as if he had been originally assessed or liable ; and the said local board may from time to time divide their district, or any street therein, into one or more parts, for all or any or either of the purposes of this Act, and make a separate assessment upon any such part for and in respect of all or any of the purposes for which the same is formed ; and in every such part, so far as relates to the purposes in respect of which such separate assessment is made, shall be exempt from any other assessment under this Act : Provided always, that if any expenses are incurred or to be incurred in respect of two or more parts of a district in common the same shall be apportioned between them in a fair and equitable manner.

## 24. Rates.

Assessment to district rates in case of unoccupied premises.

Apportionment of rates between outgoing and incoming tenants, etc.

Parts of district may be separately assessed.

The 21 & 22 Vict. c. 98, s. 54, *post*, 484, enacts that, whenever special district rate is mentioned in this Act, the Act shall be read as if no such rate were mentioned therein.

By the 21 & 22 Vict. c. 98, s. 54, *post*, 484, if the rate is appealed against, the time of appeal, etc., is to be excluded from the six months. Where a local board, being indebted to a contractor in the sum of £1083. 16s. 8d. for works necessary for carrying the Act into execution in their district, on the 12th of July, 1856, agreed to pay £1000 in full satisfaction of the sum due, and to consent to a judge's order for immediate judgment for that sum with interest and costs, and that the same should be paid on the 27th of December, 1856, it was held that the judgment was a charge within this section, and that, there being no practicable remedy upon it until the 27th of December, a rate might be made within six months from that day ; and the Court gave judgment for a peremptory mandamus to the board to make a rate. (*Reg. v. Rotherham Local Board*, 8 *El. & Bl.* 906 ; 27 *L. J.*, *Q. B.* 156.)

This provision does not apply to the liabilities of a body of commissioners acting under the powers of an improvement Act to whom the local board have succeeded, and which by the order constituting the district are charged upon the rates. Nor, in such a case, is a plea of the statute of limitations available. (*Ward v. Loundes*, 28 *L. J.*, *Q. B.* 265 ; affirmed on appeal, 1 *El. & Bl.* 940 ; 29 *L. J.*, *Q. B.* 40.)

Where, however, a rate was paid erroneously, and judgment had been obtained in an action brought to recover it six years after it had been paid, the Court of Queen's Bench refused to grant a mandamus to the local board to levy a rate and repay the money, on the ground that the action should have been brought within six months after the money was

24. Rates.

paid. (*Burland v. Kingston-upon-Hull Local Board*, 3 B. & S. 271; 32 L. J., Q. B. 17.)

A mandamus to levy a rate for paying off a contract-debt may issue within six months after judgment has been obtained, although the action was not commenced until more than six months after the claim accrued, if no undue delay has taken place. (*Worthington v. Hutton*, *Law Rep.*, 1 Q. B. 63; 35 L. J., Q. B. 61.)

Where there is a claim for compensation for damage in respect of which an award has been made, the six months must be reckoned from the making of the award, and not from the time when the damage was sustained. (*Ringland v. Lowndes*, 33 L. J., C. P. 25.) It is no answer to an application for a mandamus to compel the board to levy a rate, that the board may possibly have funds to pay the amount required, and that a fresh rate may not be necessary. (*Ringland v. Lowndes*, 33 L. J., C. P. 25.)

Past and future expenses may be provided for in one and the same rate, so long as the different items are sufficiently specified in the estimate. (*Reg. v. Workop Local Board*, 34 L. J., M. C. 220; 5 B. & S. 951.)

The rate must be authenticated in the manner pointed out by sect. 149. (*Reg. v. Workop Local Board*, 34 L. J., M. C. 220.)

In *Dorling v. The Epsom Local Board of Health* (5 El. & Bl. 471; 24 L. J., M. C. 152), where the board had made a special district rate over the entire district for (amongst other things) expenses incurred in permanent works for sewerage, the supply of water, and for lighting a portion of the district, it was held that it was discretionary with the board to exercise this power of dividing the district, and that an occupier might be assessed to the rate, although his premises derived no direct or immediate benefit from the works to meet the expenses of which the rate was imposed.

Private Improve-  
ment rates.

Sect. 90. Whenever the local board of health have incurred or become liable to any expenses which by this Act are or by the said local board shall be declared to be private improvement expenses, the said local board may, if they shall think fit, make and levy upon the occupier of the premises in respect of which the expenses shall have been incurred, except in the cases hereinafter provided, in addition to all other rates, a rate or rates to be called private improvement rates, of such amount as will be sufficient to discharge such expenses, together with interest thereon at a rate not exceeding five pounds in the hundred, in such period not exceeding thirty years as the said local board shall in each case determine: Provided always, that whenever any premises in respect of which any private improvement rate is made become unoccupied before the expiration of the period for which the rate was made, or before the same is fully paid off, such rate shall become a charge upon and be paid by the owner of the premises so long as the same continue to be unoccupied.

See, as to the expenses which may be declared to be private improvement expenses, sects. 49, 51, 54, 58, 69, and 76, *ante*; and, as to the mode of raising money to pay for them, the 21 & 22 Vict. c. 98, sects. 58 and 59, *post*, 490, 491.

See, as to "the cases hereinafter provided for," the 21 & 22 Vict. c. 98, s. 55, *post*, 485.

By the 21 & 22 Vict. c. 98, s. 54, *post*, 484, no publication of private improvement rates is necessary.

See further provisions as to the payment of expenses due from owners 21 & 22 Vict. c. 98, ss. 62, 63, *post*, 510.

Proportion of  
private improve-

Sect. 91. If the occupier by whom any private improvement rate is paid holds the premises in respect of which the rate is made at a rent not

less than the rackrent, he shall be entitled to deduct three-fourths of the amount paid by him on account of such rate from the rent payable by him to his landlord, and if he hold at a rent less than the rackrent he shall be entitled to deduct from the rent so payable by him such proportion of three-fourths of the rate as his rent bears to the rackrent; and if the landlord from whose rent any deduction is made under the provision last aforesaid is himself liable to the payment of rent for the premises in respect of which the deduction is made, and holds the same for a term of which less than twenty years is unexpired, but not otherwise, he may deduct from the rent so payable by him such proportion of the sum deducted from the rent payable to him as the rent payable by him bears to the rent payable to him, and so in succession with respect to every landlord (holding for a term of which less than twenty years is unexpired) of the same premises both receiving and liable to pay rent in respect thereof: Provided always, that nothing herein contained shall be construed to entitle any person to deduct from the rent payable by him more than the whole sum deducted from the rent payable to him.

## 24. Rates.

ment rate may be deducted from rent.

Sect. 92. At any time before the expiration of the period for which any [special district rate or] private improvement rate is made, the owner or occupier of the premises assessed thereto may redeem the same, by paying to the local board of health the expenses in respect of which the rate was made, or such part thereof as may not have been defrayed by sums already levied in respect of the same.

Redemption of special district and private improvement rates

The 21 & 22 Vict. c. 98, s. 54, *post*, 484, abolishes special district rates.

Sect. 93. Whenever and so long as any premises are supplied with water by the local board of health, for the purposes of domestic use, cleanliness, or drainage, they shall make and levy, in addition to any other rate, a water rate upon the occupier except as hereinafter provided, and the rate so made shall be assessed upon the net annual value of the premises, ascertained in the manner hereinbefore prescribed with respect to the said [special and] general district rates; and when several houses in the separate occupation of several persons are supplied by one common pipe, the respective houses shall be charged with the payment of water rates in the same manner as if each house had been supplied with water by a separate pipe: Provided always, that in any district to be called the Oxford or Cambridge district the local board of health, with the consent of the said general board, may supply water to any hall, college, or premises of the university within such district upon such terms with respect to the mode of paying for such supply as shall from time to time be agreed upon between such university, or any hall or college thereof, and the said local board.

Water Rate.

Agreements with universities.

For the cases in which the owner may be made to pay, see the 21 & 22 Vict. c. 98, s. 55, *post*, 485.

The mode of ascertaining the annual value of the premises was prescribed by sect. 88, for which, however, the 21 & 22 Vict. c. 98, s. 55, *post*, 485, is now substituted.

Special district rates are abolished by the 21 & 22 Vict. c. 98, s. 54, *post*, 484.

See, as to the constitution of the Oxford and Cambridge districts, s. 31, *ante*, 441.

Sect. 94. The said water rate shall be payable in advance; and whenever any person supplied with water under the provisions of this Act neglects to pay the water rate due from him, upon demand, the local board of health may prevent the water from flowing into the premises of the defaulter in such manner as they may think fit, and may recover the arrears due, together with the expenses of stopping the supply, in the manner herein-after provided with respect to the recovery of rates made under the authority of this Act; provided always, that the stopping or cutting off

Water rate payable in advance.

Power to stop water in case of non-payment of rates.

24. Rates.

any supply of water by the said local board under this enactment shall not relieve any person from any penalty or liability to which he would have been otherwise subject.

See, as to the recovery of rates, sects. 103 and 104, *post*, 483.

Sect. 95, which relates to compounding for rates, is repealed, and other provisions are substituted, by the 21 & 22 Vict. c. 98, s. 55, *post*, 485.

Power to reduce or remit rates on account of poverty.

Sect. 96. It shall be lawful for the local board of health to reduce or remit the payment of any rate on account of the poverty of any person liable to the payment thereof.

Act not to affect existing agreements between landlord and tenant.

Sect. 97. Nothing in this Act shall alter, interfere with, or affect any lease, contract, or agreement which shall have been made or entered into between landlord and tenant before this Act is applied to the district in which the premises are situate in respect of which the lease, contract, or agreement was made.

Estimate to be prepared before making rates.

Sect. 98. The local board of health, before proceeding to make any general [or special] district rate or private improvement rate under this Act, shall cause an estimate to be prepared of the money required for the purposes in respect of which the rate is to be made, showing the several sums required for each of such purposes; the rateable value of the property assessable, and the amount of rate which for those purposes it is necessary to make upon each pound of such value; and the estimate so made shall forthwith, after being approved of by the said local board, be entered in the rate book, and be kept at their office, open to public inspection during office hours thereat.

It seems doubtful what is the effect of omitting to prepare an estimate, or preparing one which does not show the several sums required for each purpose separately. (*Reg. v. Workson*, 34 L. J., M. C. 220.)

Special district rates are abolished by the 21 & 22 Vict. c. 98, s. 54, *post*, 484.

Notice of rate.

Sect. 99. Public notice of intention to make any general [or special] district rate, and of the time at which it is intended to make the same, and of the place where a statement of the proposed rate is deposited for inspection, shall be given by the local board of health, in the week immediately before the day on which the rate is intended to be made, and at least seven days previously thereto; but in case of proceedings to levy or recover any rate it shall not be necessary to prove that such notice was given.

Special district rates are now abolished by the 21 & 22 Vict. c. 98, s. 54, *post*, 484.

Rates to be open to inspection.

Sect. 100. Any person interested in or assessed to any rate made under this Act may inspect the same, and any estimate made previously thereto, and may take copies of or extracts therefrom, without fee or reward; and whosoever, having the custody of such estimate or rate, refuses to allow or does not permit such inspection, or such copies or extracts to be taken, shall for every such offence be liable to a penalty not exceeding five pounds.

See, as to the recovery of penalties, sects. 129-134, *post*, 505-507.

Description of owner or occupier in rates if his name be unknown.

Sect. 101. Whenever the name of any owner or occupier liable to be rated under this Act is not known to the local board of health, it shall be sufficient to assess and designate him in the rate as "the owner" or "the occupier" of the premises in respect of which the assessment is made, without further description.

Rates may be amended.

Sect. 102. The local board of health may from time to time amend any rate made in pursuance of this Act, by inserting therein the name

of any person claiming and entitled to have his name inserted, or by inserting the name of any person who ought to have been assessed, or by striking out the name of any person who ought not to have been assessed, or by raising or reducing the sum at which any person has been assessed, if it appear to the said local board that he has been under-rated or over-rated, or by making any other alteration which will make the rate conformable to the provisions of this Act; and no such amendment shall be held to avoid the rate: Provided always, that any person who may feel himself aggrieved by any such amendment shall have the same right of appeal therefrom as he would have had if the matter of amendment had appeared on the rate originally made, and with respect to him the amended rate shall be considered to have been made at the time when he first received notice of the amendment; and in the case of any person the amount of whose rate is increased by the amendment, or whose name is thereby newly inserted as aforesaid, the rate shall not be payable by him until seven days after such notice shall have been given to him.

See, as to the right of appeal, sects. 135, 136, *post*, 507.

Sect. 103. All rates made or collected under the authority of this Act shall be published in the same manner as poor-rates, and shall commence and be payable at such time or times, and shall be made in such manner and form, and be collected by such persons, and either together or separately, or with any other rate or tax, as the local board of health shall from time to time appoint; and if any person assessed to any such rate fail to pay the same when due, and for the space of fourteen days after the same shall have been lawfully demanded in writing, any justice may and he is hereby empowered to summon the defaulter to appear before him, or any other justice, at a time and place to be mentioned in the summons, to show cause why the rate in arrear should not be paid; and in case the defaulter fail to appear according to the exigency of the summons, or no sufficient cause for non-payment be shown, the justice may, by warrant under his hand and seal, cause the same to be levied by distress of the goods and chattels of the defaulter: Provided always, that if no distress sufficient to satisfy the amount can be found within the jurisdiction of the justice by whom such warrant is granted, and it so appear upon oath before a justice of any other county or jurisdiction in which any goods or chattels of the defaulter may be, the last-mentioned justice shall endorse his signature upon the said warrant, and thereupon the amount to be levied, or so much thereof as may be unsatisfied, shall be levied off the last-mentioned goods and chattels, in the same manner as if the defaulter had been assessed in the last-mentioned county or jurisdiction; and if any person quit or be about to quit any premises without payment of any rate then due from him in respect of such premises under this Act, and refuse to pay the same after lawful demand thereof in writing, any justice having jurisdiction where such person resides or his goods are found may and he is hereby empowered to summon him to appear, at a time and place to be mentioned in the summons, to show cause why the rate so due should not be paid; and in case the defaulter fail to appear, or no sufficient cause for non-payment be shown, the justice may, by warrant under his hand and seal, cause the sum to be levied by distress of the goods and chattels of the defaulter.

Rates made under this Act to be published as poor-rates, and collected as local board shall appoint.

Justices may summon persons for nonpayment, and in default may recover by distress.

Improvement rates need not be published. See the 21 & 22 Vict. c. 98, s. 54, *post*, 484.

A rate is not void for want of publication; and such a rate not having been appealed against, justices have jurisdiction to issue a warrant to enforce it. (*Le Feuvre v. Miller*, 26 L. J., M. C. 175; 8 El. & Bl. 321.)

See the 21 & 22 Vict. c. 98, sect. 54, *post*, 484, and sect. 75, *ante*, 475, as to the service of notice of demand.

By the 21 & 22 Vict. c. 98, s. 54, *post*, 484, the costs of the levy may be included in the warrant.



24. Rates.

No objection which is ground of appeal can be taken before the justices upon the hearing of the summons; and if any such objection is taken, the justice ought to disregard it; neither has he any jurisdiction to state a case upon the objection under the 20 & 21 Vict. c. 43. (*Reg. v. Newman*, 29 *L. J.*, *M. C.* 117; *S. P. Luton Local Board v. Davis*, 2 *El. & Bl.* 678; 29 *L. J.*, *M. C.* 173.)

Form of distress warrant.

Sect. 104. Warrants of distress for the recovery of any rate payable under the authority of this Act may be in the form contained in the schedule (D.) annexed to this Act (see the form, *post*), or to the like effect: and any constable authorized by any such warrant who shall neglect or refuse to make distress or sale pursuant to the same, after being required so to do by a collector of the district in which the rate in arrear was made, shall be liable to a penalty not exceeding five pounds.

Penalty upon constables refusing to levy.

Quota of rates to be paid by the universities, etc.

Sect. 105. Nothing in this Act shall be deemed to alter or interfere with the liability of the universities of Oxford and Cambridge respectively to contribute in the proportion and manner specified in any local Act under which the Oxford and Cambridge commissioners respectively now act towards the expense of paving and pitching, repairing, lighting, and cleansing, under the powers of any such local Act, the several streets, lanes, ways, alleys, passages, and places within the jurisdiction of such commissioners respectively; and in case any difference shall arise between either of the said universities and the local board of health with respect to the proportion and manner in which the university shall contribute towards any expenses under this Act, and to which the university is not liable under any such local Act, the same shall be settled by the general board of health: Provided also, that all rates, contributions, and sums of money which may become payable under this Act by the said universities respectively, and their respective halls and colleges, may be recovered from such universities, halls, and colleges, in the same manner in all respects as rates, contributions, and sums of money may now be recovered from them by virtue of any such local Act.

Evidence of rates.

Sect. 106. The production of the books purporting to contain any rate or assessment made under this Act shall alone, and without any other evidence whatsoever, be received as *prima facie* evidence of the making and validity of the rates mentioned therein.

Sect. 86 of 11 & 12 Vict. c. 63, as to the power of levying special district rate, repealed.

Debts incurred and contracts entered into before passing of this Act enforced.

By the 21 & 22 Vict. c. 98, s. 54,—

- (1.) The eighty-sixth section of the "Public Health Act, 1848," shall be repealed; and whenever special district rate is mentioned in the "Public Health Act, 1848," that Act shall be read as if no such rate were mentioned therein: Provided always, that all debts incurred and contracts and engagements entered into by or to any local board previously to the passing of this Act shall be enforced, and all powers vested in any local board of raising money by rates, tolls, or other means for the purpose of satisfying all such of the said debts, contracts, and engagements as were incurred or entered into by such local board, shall be exercised in the same manner as if this Act had not been passed.
- (2.) No publication shall be required of any private improvement rate.
- (3.) The costs of the levy of arrears of any rate may be included in the warrant for such levy.
- (4.) When any rate is appealed against, or the validity of any rate is disputed, the time during which the appeal remains undecided, or any legal proceedings concerning or relating to such rate shall be pending, shall be excluded in calculating the period of six months within which the rate may be made retrospectively.
- (5.) Notice of demand of rates may be served in the same way as

notice is hereinafter directed to be served by a local board before putting in force the powers of local boards for the taking of land otherwise than by agreement.

#### 24. Rates.

See the mode of serving notices pointed out in sect. 75, *ante*, 475.

Sect. 55. The eighty-eighth and ninety-fifth sections of the "Public Health Act, 1848," shall be repealed, and in lieu thereof be it enacted, that the general district rates shall be made and levied upon the occupier of all such kinds of property as by the laws in force for the time being are or may be assessable to any rate for the relief of the poor, and shall be assessed upon the full net annual value of such property, ascertained by the rate (if any) for the relief of the poor made next before the making of the assessments under this Act, subject, however, to the following exceptions, regulations, and conditions, namely,—

Mode of assessment of general district rate, and provision for compounding for rates in the case of small tenements.

The owner, instead of the occupier, may, at the option of the local board, be rated in cases—

Where the rateable value of any premises liable to assessment under this Act does not exceed the sum of ten pounds; or,

Where any premises liable to an assessment are let to weekly or monthly tenants; or,

Where any premises so liable as aforesaid are let in separate apartments, or where the rents become payable or are collected at any shorter period than quarterly; subject to this proviso, that in cases where the owner is rated instead of the occupier he shall be assessed upon such reduced estimate as the local board deems reasonable of the net annual value, not being less than two-thirds nor more than four-fifths of such annual value.

And where such reduced estimate is in respect of tenements, whether occupied or unoccupied, then such assessment may be made on one-half of the amount at which such tenements would be liable to be rated if the same were occupied and the rate were levied on the occupiers.

The owner of any tithes, or of any tithe commutation rent-charge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall be assessed in respect of the same in the proportion of one-fourth part only of such net annual value thereof.

Certain kinds of property assessable on one-fourth of their net annual value

Provided nevertheless, that if within any district or part of a district any kind of property be exempted from rating by any local Act in respect of all or any of the purposes for which general district rates may be made under this Act, the same kind of property shall, in respect of the same purposes, and to the same extent within the parts to which the exemption applies, but not further or otherwise, be exempt from assessment to any general district rates under this Act, unless a provisional order obtained and confirmed by Parliament in manner hereinafter provided shall otherwise direct.

Provision as to exemptions from rating under local Acts.

The proviso at the end of the section is similar to that contained in the 11 & 12 Vict. c. 63, s. 88 (the repealed section), which was held to apply only to exemptions in respect of the nature of the property, and not to property exempt under a local Act in respect merely of its locality, as, for instance, where it was in an extra-parochial district, although the property so locally situate was exempt from poor-rate. (*Tait v. Carlisle (Board of Health)*, 2 *El. & Bl.* 493.)

The words "land used as a railway" include the line of railway, the embankment supporting the line, the sidings and turntables, and so much of the platform as is to be considered as the side of the railway;

24. *Rates.*

but they do not include the remainder of the platform, or the stations, offices, engine-sheds, warehouses, tanks, waterworks, cranes, or other fixed plant, buildings, machinery, or works (although necessary for the use and working of the railway, and connected and used therewith), which are therefore liable to be rated at the full net annual value. (*South Wales Railway Company v. Swansea Local Board*, 4 *El. & Bl.* 189; 24 *L. J.*, *M. C.* 30; *S. P. Chelmsford Union v. Chelmsford Local Board*, 2 *E. & B.* 500.)

By a local paving and lighting Act, rates for the purpose of the Act were to be made upon the occupiers of houses in a borough, and upon the gardens thereto adjoining or belonging, and upon all gardens, tenements, and hereditaments adjoining to or upon any of the streets, lanes, roads, passages, or other public places made or built within the populous or town part of the borough, or so contiguous to some such street that there be no greater distance than 100 feet from such street to the nearest of such houses or buildings, or the gardens thereunto adjoining or belonging, nor from such last-mentioned houses, buildings, or gardens to such as shall be next succeeding, and so on from one rateable house or building or garden to the next or nearest. L. was rated by the local board as the occupier of a field and market-garden within the borough; but they were not adjoining or belonging to any house or building, nor adjoining to, nor upon, nor within 100 feet of any of the streets, lanes, roads, passages, or other public places within the populous or town part of the borough; nor had any rate ever been paid in respect of them under the local Act. Held (by Lord Campbell, C.J., *Wightman and Crompton*, J.J.; *Erle*, J., dissenting), that the field and market-garden were exempted by the local Act in respect of their locality, and not in respect of their kind, and that they were, therefore, liable to be rated. (*Luscombe v. Plymouth Local Board*, *El. Bl. & El.* 691; 27 *L. J.*, *M. C.* 299.)

Moreover, the exemption must be an exemption by right, and not an exemption in fact merely. (*Coates v. Kingston-upon-Hull Local Board*, 2 *Jur.*, *N. S.* 1086, *Q. B.*; *S. P. Pontey v. Plymouth Local Board*, 27 *L. J.*, *M. C.* 299.)

A railway constructed under an Act of Parliament, for the transportation of traffic, and as accessory to a dock, but free to the public upon payment of certain rates and tolls, was held to be a railway within the meaning of the proviso, although neither used nor intended for the conveyance of passengers. (*Reg. v. Newport Dock Company*, 31 *L. J.*, *M. C.* 266.)

Real property within the district of a local board is not assessable, unless there is some person having such an occupation as would make him liable to the poor-rate in respect thereof. Therefore, where under a local Act justices of the peace for a county built court-houses in the city which were used solely for the purposes of holding the assizes, the quarter sessions, and the public meetings of the justices of the county, and the meetings for transacting the public affairs and the business of the county, and the expenses were paid out of the county rate, it was held that the county justices were not rateable occupiers, and that the court-houses were not assessable to a district rate. (*Hodgson v. Carlisle Local Board*, 8 *El. & Bl.* 116.)

Where the guardians of the poor of a union consisting of two parts, one within and one without a borough, built a workhouse and workhouse hospital for the part without the borough, and used them for the poor of the whole union, it was held that they were rateable to the relief of the poor in respect of the workhouse, and consequently were liable to pay a general district rate made by the local board of the part without the borough. (*Toxteth Park Guardians v. Toxteth Park Local Board*, 1 *B. & S.* 167; 30 *L. J.*, *M. C.* 154.)

A wet dock is "land covered with water." (*Reg. v. Newport*, 31 *L. J.*, *M. C.* 266.)

Sect. 56. For the purpose of assessing the general district rate, any person appointed by the local board may inspect, take copies of or make extracts from, any rate for the relief of the poor within the district, or any books relating to the same; and if any officer having the custody of such last-mentioned rate or book refuses to permit any such inspection, or the taking of any such copies or extract, he shall for each offence incur a penalty not exceeding five pounds: If there is no such assessment as aforesaid for the relief of the poor by reference to which such net annual value can be estimated, or if such assessment is, in the judgment of the local board, an unfit criterion for making a general district rate, a valuation shall be made by a person appointed by the local board for that purpose, in manner, as near as circumstances will permit, prescribed by an Act passed in the seventh year of the reign of King William the Fourth, intituled "An Act to regulate Parochial Assessments," or any other Act for the time being in force for regulating parochial assessment; and the net annual value of the property shall be ascertained by reference to the said valuation and assessment.

See the 6 & 7 Will. 4, c. 96, tit. "*Poor*," Vol. IV.

By the 24 & 25 Vict. c. 61, s. 12, where in any district special district rates are levied over the same area as general district rates, the local board may make and levy such special district rates as part, and under the name, of general district rates: Provided always, that the levying of such rates by the means aforesaid shall in no way prejudicially affect any mortgages now or hereafter to be made upon such special district rates.

Sect. 13. Where any local board of health have incurred expenses in or about any works of a permanent nature, and have made and levied a special district rate upon or in respect of the premises situate in part of their district, and have borrowed and taken up at interest on the credit of the said special district rate any sums of money necessary for defraying such expenses, it shall be lawful for such local board, with the sanction of one of her Majesty's principal secretaries of state, and with the consent of all persons having advanced money on the security of the said special district rate, and with the consent of the owners and ratepayers of the district, to be expressed by resolution in the manner herein provided with respect to resolutions for the adoption of the said "Local Government Act," to pay off and discharge the sums so borrowed and taken up at interest on the credit of the said special district rate, or such part thereof as shall then remain due, and to re-borrow and take up at interest on the credit of the general district rates of the said local board any sums of money which shall have been so paid off and discharged, and for the purpose of securing the repayment of any sums so borrowed, together with interest thereon, the local board may mortgage the said general district rates to the persons by or on behalf of whom such sums are advanced, subject to the regulations prescribed by the fifty-seventh section of the "Local Government Act, 1858."

See the 21 & 22 Vict. c. 98, s. 57, *post*, 490.

Sect. 23. The expenses which have been incurred by any local board of health as and for private improvement expenses under the "Public Health Act, 1848," as also the expenses stated in the sixty-second section of "The Local Government Act, 1858," to be a charge on the premises, with interest after the rate of five per centum per annum, may, by order of the local board of health, be declared payable by annual instalments, with interest after the rate aforesaid, during a period not exceeding thirty years, until the whole amount be paid; and any such instalments and interest, or any part thereof, may be recovered from the owner or occupier of such premises in the same manner as general district rates, and may be deducted from the rent of such premises in the

## 24. Rates.

Poor-rate books to be accessible for rating under Public Health Acts.

Power of valuation as prescribed by 6 & 7 Will. 4, c. 96, in case there should be no assessment.

Special district rates leviable over same area as general district rates may be levied as part, and under the name, of such rates.

Debts due on special district rates may, with the sanction of the secretary of state and of mortgagees, and of owners and ratepayers, be repaid, and money raised for such repayment on credit of general district rate.

Provision for recovery of charges for private improvements.

### 25. Mortgage of Rates.

same proportions as are allowed in the case of private improvement rates under the ninety-first section of "The Public Health Act, 1848."

See the 21 & 22 Vict. c. 98, s. 62, *post*, 510; and the 11 & 12 Vict. c. 63, s. 91, *ante*, 480; and as to general district rates, see 11 & 12 Vict. c. 63, s. 87, *et seq.*, *ante*, 478.

#### 25. MORTGAGE OF RATES.

The 11 & 12 Vict. c. 63, s. 107, relating to the mortgage of rates is repealed, and other provisions are substituted by the 21 & 22 Vict. c. 98, s. 57, *post*, 490.

Commissioners of public works may make advances to local boards under 5 & 6 Vict. c. 9.

Sect. 108. The commissioners acting in the execution of an Act passed in the second session of the fifth year of her Majesty's reign, intituled "An Act to authorize the Advance of Money out of the Consolidated Fund, to a limited Amount, for carrying on Public Works and Fisheries and Employment of the Poor, and to amend the Acts authorizing the Issue of Exchequer Bills for the like Purposes," and in the execution of any of the Acts recited in that Act, or of any Act or Acts for amending or continuing the same Acts or any of them, may, if they shall think fit, make advances to the local board of health of any district for the purposes of this Act, upon the security of the rates to be levied by such board under this Act, and without requiring any further or other security than a mortgage of such rates.

See, for an extension of the borrowing powers, the 21 & 22 Vict. c. 98, s. 78, *post*, 491. Where these borrowing powers have been imported into any local Act to be exercised with the consent of the general board of health, they may now, by the 24 & 25 Vict. c. 61, s. 14, *post*, 499, be exercised with the consent of a secretary of state.

Money may be borrowed at lower rates of interest to pay off securities bearing a higher rate.

Sect. 109. If the local board of health can at any time borrow at a lower rate of interest than that secured by any mortgage previously made by them, and then outstanding and in force, they may, if they shall think fit, so borrow accordingly, in order, with the consent of the mortgagee, to pay off and discharge any of the securities bearing a higher rate of interest, and may charge the rates which they may be authorized to mortgage under this Act with payment of the sum so borrowed, together with the interest thereon, in such manner and subject to such regulations as are herein contained with respect to other moneys borrowed upon mortgage.

Power to borrow money to pay off former mortgages.

Sect. 110. If at the time appointed by any mortgage deed for payment of the principal money secured thereby the local board of health are unable to pay off the same, they may, if they shall think fit, borrow such sum of money as may be necessary for the purpose of paying off the whole or any part of the said principal moneys, and may secure the repayment of the same, and the interest to be paid thereon, in the same manner in all respects as in the case of moneys borrowed for defraying costs, charges, and expenses, incurred by the local board of health in the execution of this Act.

Form of mortgage.

Sect. 111. Every mortgage authorized to be made under this Act shall be by deed, truly stating the date, consideration, and the time and place of payment, and shall (in the case of a non-corporate district) be sealed with the seal of the local board of health by or on the part of whom the same is executed, and be signed by five or more members thereof, (or in the case of a corporate district) be sealed with the common seal, and may be made according to the form contained in the schedule (B.) to this Act annexed, or to the like effect; and there shall be kept at the office of the local board of health a register of the mortgages upon each rate, and within fourteen days after the date of any mortgage an entry shall be made in the register of the number and date thereof, and of the names

Register of mortgages.

and description of the parties thereto, as stated in the deed; and every such register shall be open to public inspection during office hours at the said office, without fee or reward; and any clerk or other person having the custody of the same, refusing to allow such inspection, shall be liable to a penalty not exceeding five pounds.

See, as to the recovery of penalties, ss. 129-134, *post*, 505-507.

Sect. 112. Any mortgagee or other person entitled to any such mortgage may transfer his estate and interest therein to any other person by deed duly stamped, truly stating its date and the consideration for the transfer; and such transfers may be according to the form contained in the schedule (C.) to this Act annexed, or to the like effect; and there shall be kept at the office of the local board of health a register of the transfers of mortgage charged upon each kind of rate, and within thirty days after the date of such deed of transfer, if executed within the United Kingdom, or within thirty days after its arrival in the United Kingdom if executed elsewhere, the same shall be produced to the clerk, who shall, upon payment of the sum of five shillings, cause an entry to be made in such register of its date, and of the names and description of the parties thereto, as stated in the transfer; and upon any transfer being so registered the transferee, his executors, administrators, or assigns, shall be entitled to the full benefit of the original mortgage, and the principal and interest secured thereby; and every such transferee may in like manner transfer his estate and interest in any such mortgage; and no person except the person to whom the same shall have been last transferred, his executors, administrators, or assigns, shall be entitled to release or discharge any such mortgage, or any money secured thereby.

## 25. Mortgage of Rates.

Transfer of mortgages.

Register of transfers.

Sect. 113, relating to the payment of interest and the formation of a sinking fund is repealed, and other provisions are substituted by the 21 & 22 Vict. c. 98, s. 57, *post*, 490.

Sect. 114. If at the expiration of six months from the time when any principal money or interest has become due upon any mortgage of rates made under this Act, and after demand in writing, the same be not paid, the mortgagee or other person entitled thereto may, without prejudice to any other mode of recovery, apply for the appointment of a receiver to two justices, who are hereby empowered, after hearing the parties, to appoint in writing under their hands and seals some person to collect and receive the whole or a competent part of the rates liable to the payment of the principal or interest in respect of which the application is made, until such principal or interest, or both, as the case may be, together with the costs of the application and the costs of collection, are fully paid; and upon such appointment being made all such rates, or such competent part thereof as aforesaid, shall be paid to the person appointed, and when so paid shall be so much money received by or to the use of the mortgagee or mortgagees of such rates, and shall be rateably apportioned between them: Provided always, that no such application shall be entertained unless the sum or sums due and owing to the applicant amount to one thousand pounds, or unless a joint application be made by two or more mortgagees or other persons to whom there may be due, after such lapse of time and demand as last aforesaid, moneys collectively amounting to that sum.

Receiver may be appointed in certain cases.

See, as to other cases in which a receiver may be appointed and his powers, the 21 & 22 Vict. c. 98, s. 10, *infra*.

By the 21 & 22 Vict. c. 98, sect. 10, the powers of the one hundred and fourteenth section of the "Public Health Act, 1848," for the appointment of a receiver, may be exercised in the event of a failure to elect a local board, or of the lapse of a local board from death, resignation, dis-

Powers of sect. 114 of 11 & 12 Vict. c. 63, for appointment of receiver, may be

### 25. *Mortgage of Rates.*

exercised in event of failure to elect a local board.

Sections 107, 113, and 119 of 10 & 11 Vict. c. 63, repealed, and power given for raising money on credit of rates.

qualification, or otherwise, of the persons elected to serve on such local board; and in case of such failure or lapse any receiver appointed under that section may make as well as collect and receive rates as directed in that section, or such rates as are required to satisfy all liabilities of the local board, and may receive and recover all arrears due to the said local board, and apply the same to meet such liabilities; and any such receiver shall have the same powers with respect to other creditors of the local board as he has by the said section with regard to mortgagees.

Sect. 57. The one hundred and seventh, the one hundred and thirteenth, and the one hundred and nineteenth sections of the "Public Health Act, 1848," shall be repealed; and in lieu thereof be it enacted, That the local board, or any board of improvement commissioners exercising the borrowing powers of the "Public Health Act, 1848," may, for the purpose of defraying any costs, charges, and expenses incurred or to be incurred by them in the execution of this Act or of any Act incorporated herewith, or of any Act incorporating the powers of the "Public Health Act, 1848," borrow and take up at interest, on the credit of the charges and rates authorized to be made or collected under the said Acts respectively, any sums of money necessary for defraying any such costs, charges, and expenses; and for the purpose of securing the repayment of any sums so borrowed, together with such interest as aforesaid, the said local board may mortgage to the persons by or on behalf of whom such sums are advanced the said charges and rates or any of them; but the exercise of the above power shall be subject to the following regulations:—

1. Such money shall not be borrowed except for permanent works, nor without the sanction of one of her Majesty's principal secretaries of state;
2. The money so borrowed shall not, except as hereinafter provided, at any time exceed in the whole the assessable value for one year of the premises assessable within the district in respect of which such money may be borrowed;
3. The money may be borrowed for such time, not exceeding thirty years, as the local board, with the sanction of one of her Majesty's principal secretaries of state, determine in each case; and, subject as aforesaid, the local board may either pay off the moneys so borrowed by equal annual instalments, or they may in every year set apart as a sinking fund, and accumulate in the way of compound interest by investing the same in the purchase of exchequer bills or other government securities, such sum as will be sufficient to pay off the moneys so borrowed, or a part thereof, at such times as the local board may determine:

And in cases where the local board borrow any money for the purpose of defraying private expenses, or expenses in respect of which they have determined a part only of the district to be liable, it shall be the duty of the local board, as between the ratepayers of the district, to make good, so far as they can, the money so borrowed, as occasion requires, either out of private improvement rates; or out of a rate levied in such part of the district as aforesaid.

Rentcharge may be granted for advances made to meet first cost of private improvements.

Sect. 58. Where any person shall advance money for any expenses which, by the said "Public Health Act, 1848," are, or by the said local board shall be, declared to be private improvement expenses, the said local board, on being satisfied by the report of their surveyor or otherwise that the money advanced by such person has been duly expended, may issue a grant in the form (B.) in the schedule hereunto annexed to such person of a yearly rentcharge to be issuable out of the premises in respect whereof such advance shall have been made, or out of such part

thereof, to be specified in such grant, as the said local board shall think proper and sufficient, such rentcharge to be personal estate, and to begin to accrue from the day of completion of the works on which such money shall have been expended as aforesaid, and to be payable by equal half-yearly payments for and during a term not exceeding thirty years, in such manner that the whole of the said sum so to be advanced as aforesaid, with the costs of preparing the said grant so to be issued as aforesaid, together with interest thereon respectively, at a rate not exceeding six pounds *per centum per annum* upon the sum from time to time remaining unpaid, shall be repaid at the end of the said term: Provided always, that the grantee of such rentcharge shall, for the recovery of the same have all the powers, authorities, rights, and remedies of the said local board with respect to private improvement rates, and the provisions of the ninety-first and ninety-second sections of the "Public Health Act, 1848," shall also be applicable to such rentcharge.

See the 11 & 12 Vict. c. 63, ss. 91 and 92, *ante*, 480, 481.

Sect. 59. All rentcharges made in pursuance of this Act, and transfers thereof, shall be registered in the same manner respectively as mortgages and transfers are required to be registered under the one hundred and eleventh and one hundred and twelfth sections of the "Public Health Act, 1848."

See the 11 & 12 Vict. c. 63, ss. 111, 112, *ante*, 488, 489.

Sect. 78. Where a local board, or any board of improvement commissioners exercising the borrowing powers of the "Public Health Act, 1848," or this Act, or of any local Act, has contributed to, purchased, or executed works of sewerage and water supply, or proposes to contribute to, purchase, or execute such works, and where the cost of such works exceeds or is estimated to exceed one year's assessable value of the premises assessable within the district in respect of which such money may be borrowed, it shall be lawful for such board to present a petition to one of her Majesty's principal secretaries of state praying for powers to borrow or reborrow for such works, on mortgage of the rates leviable by them under the "Public Health Act, 1848," and this Act, and any local Act, an amount not exceeding two years' assessable value of the premises assessable within the district in respect of which such money may be borrowed or reborrowed, such amount to be repaid within such period not exceeding fifty years as such board, with the sanction of one of her Majesty's principal secretaries of state, shall in each case determine; and it shall be lawful for any of her Majesty's principal secretaries of state to direct inquiry on such petition, and to issue a provisional order thereupon, and to take steps for the confirmation of any such provisional order by Act of Parliament in the manner sanctioned in the preceding section.

See sects. 57–59, *ante*, 490, and also the 11 & 12 Vict. c. 63, sects. 108–114, *ante*, 488, 489.

See also the 24 & 25 Vict. c. 61, s. 19, *infra*, for an extension of the powers given by this section.

By the 24 & 25 Vict. c. 61, s. 19, the powers granted by the seventy-eighth section of the "Local Government Act, 1858," may be exercised in any case where any local board or board of improvement commissioners exercising the borrowing powers of the "Public Health Act, 1848," or the "Local Government Act, 1858," or of any local Act, has contributed to, purchased, or executed any permanent works, or proposes to contribute to, purchase, or execute such works, at a cost exceeding or estimated to exceed one year's assessable value of the premises assessable within the district in respect of which the money for such works may be borrowed."

See the 21 & 22 Vict. c. 98, s. 78, *supra*.

## 25. Mortgage of Rates.

Rentcharges to be registered.

Extension of borrowing powers in certain cases.

Extension of powers given by sect. 78 of 21 & 22 Vict. c. 98, to cases in which local boards incur expenses for permanent works, etc.



26. *Bye-laws.*

## 26. BYE-LAWS.

Bye-laws of local board not to be in force till confirmed by secretary of state.

Notice of confirmation, etc.

By the 11 & 12 Vict. c. 63, s. 115, all byelaws made by the local board of health under and for the purposes of this Act shall be in writing under their seal, and the signature of any five or more of their number, or (in the case of a corporate district) under the common seal; and the said local board may by any such bye-laws impose upon offenders against the same such reasonable penalties as they shall think fit, not exceeding the sum of five pounds for each offence, and in the case of a continuing offence a further penalty not exceeding the sum of forty shillings for each day after written notice of the offence from the said local board; and the said local board may alter or repeal any such bye-laws by any subsequent bye-laws, sealed and signed or (in case of a corporate district) sealed as last aforesaid: Provided always, that all such bye-laws imposing any penalty shall be so framed as to allow of the recovery of any sum less than the full amount of the penalty: Provided also, that no such bye-laws shall be repugnant to the laws of England or to the provisions of this Act, and the same shall not be of any force or effect unless and until the same be submitted to and confirmed by one of her Majesty's principal secretaries of state, who is hereby empowered to allow or disallow the same, as he may think proper: Provided also, that no such bye-laws shall be confirmed unless notice of intention to apply for confirmation of the same shall have been given in one or more of the public newspapers usually circulated within the district to which such byelaws relate one month at least before the making of such application; and for one month at least before any such application a copy of the proposed bye-laws shall be kept at the office of the local board of health, and be open during office hours thereat to the inspection of the ratepayers of the district to which such bye-laws relate, without fee or reward; and the clerk shall furnish every such ratepayer who shall apply for the same with a copy thereof or of any part thereof on payment of sixpence for every one hundred words contained in such copy.

See, as to the recovery of penalties, sects. 129-134, *post*, 505-507.

See, as to the matters in respect of which bye-laws may be made, sects. 34, 37, 64, 66, and 81, *ante*, 442, 443, 458, 459, 472, and the 21 & 22 Vict. c. 98, ss. 32, 34, *ante*, 455, 456, and the 24 & 25 Vict. c. 61, s. 25, *infra*.

This section does not confer any general power of making bye-laws, but only regulates the mode in which bye-laws are to be made under the different sections by which they are authorized. (*Reg. v. Wood*, 5 *El. & Bl.* 49; *S. C. nom. Reg. v. Rose*, 24 *L. J., M. C.* 130.)

Confirmation by the secretary of state is not conclusive; and, *semble*, if a bye-law is invalid, a justice has no jurisdiction to convict upon an information charging a neglect to comply with it. (*Reg. v. Wood*, 5 *El. & Bl.* 49; *S. C. nom. Reg. v. Rose*, 24 *L. J., M. C.* 130.)

Where, upon the hearing of an information, the justice refused to entertain an objection that the bye-law was bad on the ground that the confirmation by the secretary of state was conclusive, the Court of Queen's Bench quashed the conviction upon *certiorari*, holding that the bye-law was bad, and that the justice had acted without jurisdiction. (*Ibid.*)

Bye-laws to be printed, etc.

Sect. 116. All bye-laws made by the local board of health in pursuance of this Act shall be printed and hung up in the office of the said local board; and copies thereof shall be delivered to any ratepayer of the district to which such bye-laws relate, upon his application for the same.

Local board may make bye-laws for licensing, etc., horses, boats, etc., for hire.

By the 24 & 25 Vict. c. 61, s. 25, the local board may make bye-laws for licensing and regulating horses, ponies, mules, or asses standing for hire in the district, and for prescribing and regulating the stands, and fixing the rates of hire, and ordering the conduct of the drivers or

attendants thereof, and also for licensing, regulating, and fixing the rates of hire of pleasure boats or vessels, and the persons in charge of the same.

See, as to the mode of making bye-laws, the 11 & 12 Vict. c. 63, ss. 115 *et seq.*, *ante*, 492.

27. Powers Transferred, etc.

#### 27. POWERS TRANSFERRED, HIGHWAYS, ETC.

By the 11 & 12 Vict. c. 63, s. 117, the local board of health within the limits of their district shall, exclusively of any other person whatsoever, execute the office of and be surveyor of highways, and have all such powers, authorities, duties, and liabilities as any surveyor of highways in England is now or may hereafter be invested with or be liable to by virtue of his office by the laws in force for the time being, except in so far as such powers, duties, or authorities are or may be inconsistent with the provisions of this Act; and the inhabitants of any district shall not in respect of any property situate therein be liable to the payment of highway rate or other payment, not being a toll, in respect of making or repairing roads or highways within any parish, township, or place, or part of any parish, township, or place, situate beyond the limits of such district: Provided always, that the several persons who at the time when this Act is applied to any district are surveyors of highways within the same district may recover any highway rate made in respect of the said district, and then remaining unpaid, in the same manner as if this Act had not been passed; and the money so recovered shall be applied, in the first place, in reimbursing themselves any expenses incurred by them as such surveyors, and in discharging any debts legally owing by them on account of the highways within their jurisdiction; and the surplus (if any) shall be paid by them to the treasurer, and carried to the district fund account mentioned in this Act: Provided also, that neither the allowance by justices, nor the signature by the local board of health, shall be necessary in the case of any rate made by the local board of health under this Act.

Local board to be surveyors of highways;

but existing surveyors to recover rates in arrear.

See also the 24 & 25 Vict. c. 61, s. 10, *post*, 495, which enables local boards to act instead of inhabitants in vestry assembled of townships in their districts in all matters arising under the provisions of the 5 & 6 Will. 4, c. 50.

The 21 & 22 Vict. c. 98, s. 37, *post*, 494, provides a different destination in certain cases for the moneys recovered under this section. The same section declares the rate out of which the repair of highways is to be provided for.

The board may be ordered to contribute to the repair of a turnpike road within the district under the 4 & 5 Vict. c. 59. (*Reg. v. Worthing and Lancing Road Trustees*, 3 *El. & Bl.* 989; 23 *L. J., M. C.* 187.) It would seem that such contribution must be paid out of the general district rate or out of the highway rate, or out of both proportionately, according as the repairs of the highways in the district are provided for out of one or other or both of these rates, under the 21 & 22 Vict. c. 98, s. 37.

Sect. 118. Notwithstanding the application of this Act to any district, the liability of any person whomsoever to defray or contribute towards the expense of making, completing, altering, amending, or maintaining any sewer, or any walls or works for protecting the land against the force or encroachments of the sea, or of paving or flagging or putting in order any street or part thereof within the district, shall, if incurred previously to the time when this Act is so applied, continue, and the same may be enforced, as if this Act had not been passed, and the rates to be levied under this Act shall be made only for purposes to which such liability does not extend.

Existing liabilities to make sewers, etc., not to be discharged

27. *Powers  
Transferred,  
etc.*

Cost of highway  
repair to be de-  
frayed out of  
general district  
rate in certain  
cases.

Power to levy  
highway rates in  
certain cases.

Certain acts not  
required to be  
done in case of  
highway rate  
being made by  
local board.

Application of  
surplus under  
sect. 117 of 11 &  
12 Vict. c. 63.

*Highway Repairs.*

By the 21 & 22 Vict. c. 98, s. 37, and whereas doubts have arisen as to the rate out of which the repair of highways is to be provided for in districts under the "Public Health Act, 1848": be it enacted, that in such districts, or in districts where this Act is adopted, and where no other mode of providing for the repair of highways is directed by any local Act:

1. Where the whole of the district is rated to public works of paving, water supply, and sewerage, or to works for such of these purposes as are provided for in the district, the cost of repair of highways shall be defrayed out of the general district rate:
2. Where parts of a district are not rated for works of paving, water supply, and sewerage, or for such of these purposes as have been provided for by rate in the district, the cost of the repair of highways in the same parts shall be defrayed out of a highway rate to be separately assessed and levied in the same parts by the local board as surveyor of highways, and the cost of such repair in the residue of the district shall be defrayed out of the general district rate:
3. Where no public works of paving, water supply, and sewerage are established in the district, the repair of highways in the district shall be provided for by a highway rate, to be levied over the whole district by the local board as surveyors of highways:
4. This subdivision is repealed, and other provisions are substituted by the 24 & 25 Vict. c. 61, s. 9, *post*, 495.
5. Provided, that it shall not be necessary for any local board, in the case of any highway rate made by them, to do the following acts or any of them; that is to say,—

To lay such rate before any justices, or obtain their allowance;

To annex thereto the signature of such local board;

To lay the same before the parishioners assembled in vestry;

To verify before any justices any accounts kept by them of such highway rates:

and all such accounts shall be audited in all respects in the same way as the other accounts of local boards, and all ministerial acts required by any Act of Parliament to be done by the surveyor of highways may be done by the surveyor of the local board, or by such other person as they may appoint:

6. The surplus of any moneys directed by the one hundred and seventeenth section of the "Public Health Act, 1848," to be paid by surveyors of highways to the treasurer of the local board, and to be carried to the district fund account, shall, for every district or part of a district where the roads are repaired out of highway rate, be carried by the same treasurer to a separate account to be kept by him, and called the highway-rate account. The Act of the thirteenth Victoria, chapter thirty-five, "for requiring annual returns of the expenditure on highways in England and Wales to be transmitted to the secretary of state, and afterwards laid before Parliament," shall apply to the clerk to every such local board as aforesaid in like manner as to the clerk to any such trustee or commissioner as in such Act mentioned.

See, for the doubts referred to, the cases of *Elmer v. The Norwich Local Board* (3 *El. & Bl.* 517: 23 *L. J.*, *Q. B.* 203), *Reg. v. Worthing* (23 *L. J.*, *M. C.* 187; 3 *El. & Bl.* 989), *Hanson v. Epsom Local Board* (5 *El. & Bl.* 599; 25 *L. J.*, *M. C.* 27), *Barber v. Jessop* (1 *H. & N.* 578; 26 *L. J.*, *Ex.* 186), *Moseley v. Ely Local Board* (6 *El. & Bl.* 518;

26 *L. J., M. C. 23*), and *Taff Ry. Co. v. Cardiff Local Board* (8 *El. & Bl.* 535.)

In a district coming within the third subsection, and consisting of a parish comprising three townships, the local board has no authority to levy a district highway rate for one of the townships only. (*Re Broughton Local Board*, 12 *L. T., N. S.*, 310.)

See, as to the auditing of the accounts, sect. 60, *post*, 500.

By the 24 & 25 Vict. c. 61, s. 9, the subdivision numbered (4) in the thirty-seventh section of the said "Local Government Act, 1858," shall be and the same is hereby repealed; and in lieu thereof be it enacted as follows:—

1. Where part of a township, or place not comprised within any district in which the said "Local Government Act, 1858," is in force, and which part is hereinafter referred to as "the excluded part," was, before the said Act came into force in such district, liable to contribute to the highway rates for such township or place, such excluded part shall for all purposes connected with the repairs of highways and the payment of highway rates, be considered to be and be treated as if forming part of such district:
2. It shall be lawful for a meeting of ratepayers of the excluded part (to be convened and conducted in the manner prescribed by the thirteenth section of the said "Local Government Act, 1858," with respect to districts not being corporate boroughs or towns, under the jurisdiction of improvement commissioners) to decide that such excluded part shall be formed into a separate highway district, and thereupon the excluded part shall for all purposes connected with highways, surveyors of highways, and highway rates, be considered and treated as a township maintaining its own highways:
3. The requisition for holding such meeting as last-mentioned shall, in any excluded part where the said "Local Government Act, 1858," has been in force before the passing of this Act, be presented within six calendar months after the passing of this Act, and in all other cases within six calendar months after the adoption of the said "Local Government Act, 1858:" but nothing in this section before contained shall apply to districts constituted under the "Public Health Act, 1848," including a part only of any parish, township, or place which before the constitution of such district maintained its own highways.

See the 21 & 22 Vict. c. 98, s. 13, *ante*, 429.

Sect. 10. All the powers, authorities, and discretion which in and by the Act of the fifth and sixth years of the reign of King William the Fourth, chapter fifty, are vested in and given to the inhabitants in vestry assembled of any parish, township, or place, shall, within the districts where the "Local Government Act" is in force, be vested in and exercisable by the local boards, or commissioners exercising the powers of such local boards, under the provisions of this Act and of the "Public Health Act, 1848," and of the "Local Government Act, 1858;" and all acts or consents already done or given or purporting to be so done or given by such local boards, under and by virtue of the said Act of the fifth and sixth years of William the Fourth, chapter fifty, acting or assuming to act in lieu of the inhabitants in vestry assembled of any parish, township, or place within the district of the local board, shall operate and be as valid and effectual as if the same had been done and given or executed by such inhabitants in vestry.

See the 5 & 6 Will. 4, c. 50, *Vol. II.*, tit. "Highways."

Sect. 26. Where a board of improvement commissioners, or other local authority, exercising any of the powers of the "Local Government

27. *Powers Transferred, etc.*

Provision for repair of highways in parts of parishes or townships not included in districts under "Local Government Act" as herein stated.

Enabling local boards to act instead of inhabitants in vestry of townships in their districts in all matters arising under the provisions of 5 & 6 Will. 4, c. 50.

Sect. 69 of 5 & 6 Will. 4, c. 50, to apply to en-

28. *Powers Incorporated.*

encroachments on highways managed by local authority.

Certain provisions of 10 & 11 Vict. c. 89, incorporated with this Act.

Certain provisions of 10 & 11 Vict. c. 34, incorporated with this Act.

Act, 1858," maintains and repairs the highways within the area of its jurisdiction, the sixty-ninth section of the Act of the fifth and sixth William the Fourth, chapter fifty, shall be held to apply to all encroachments on such highways.

See the 5 & 6 Will. 4, c. 50, s. 69, *Vol. II.*, tit. "*Highways.*"

28. POWERS INCORPORATED.

By the 21 & 22 Vict. c. 98, s. 44, the provisions of the "*Towns Police Clauses Act, 1847,*"

1. With respect to obstructions and nuisances in the streets,
2. With respect to fires,
3. With respect to places of public resort,
4. With respect to hackney carriages,
5. With respect to bathing,

shall be incorporated with this Act.

See the "*Towns Police Clauses Act,*" *post*, tit. "*Police of Towns.*"

Sect. 45. The provisions of "*The Towns Improvement Clauses Act, 1847,*" with respect to the following matters, that is to say,—

1. With respect to naming the streets and numbering the houses,
2. With respect to improving the line of the streets and removing obstructions,
3. With respect to ruinous or dangerous buildings,
4. With respect to precautions during the construction and repair of the sewers, streets, and houses,
5. With respect to the supply of water, except the proviso thereto,
6. With respect to the prevention of smoke,
7. With respect to slaughter-houses,
8. With respect to clocks,

Shall be incorporated with this Act, subject to this qualification, that the above-mentioned provisions with respect to the prevention of smoke shall not extend to compel the consumption of all smoke in the case of all or any of the processes following; that is to say, to the coking of coal, the calcining of ironstone or limestone, the making or burning of bricks, earthenware, quarries, tiles, or pipes, the raising of any mines or minerals, the smelting of iron ores, the refining, puddling, shingling, and rolling of iron or other metals, or to the melting and casting of iron into castings, or to the manufacture of glass, in any district where the provisions of the said Act for the prevention of smoke are not now in force, in which the local board shall resolve that any one or more of such processes should be exempted from penalties for not consuming all smoke for any time specified in such resolution, not exceeding ten years, which may be annually renewed for a similar or any shorter period, if the board shall think fit, and any justice or justices before whom any person shall be summoned may remit the penalty in any case within such district in which he or they shall be of opinion that such person has adopted the best known means for preventing any nuisance from smoke, and has carefully attended to the same, so as to consume, as far as possible, the smoke arising from any process so exempted during such time as any such resolution shall extend to, unless an order shall be issued by one of her Majesty's principal secretaries of state directing that such exemption shall no longer be continued in such district to such processes or any of them, after a time specified in such order.

See the 10 & 11 Vict. c. 34, *Vol. V.*, tit. "*Towns Improvement.*"

"Watching and Lighting Act" (3 & 4 Will. 4,

Sect. 46. In any district where the "*Public Health Act, 1848,*" is in force, or where this Act is adopted, and in which the Act passed in the

third and fourth years of the reign of King William the Fourth, intituled "An Act to repeal an Act of the eleventh year of his late Majesty King George the Fourth, for the lighting and watching of parishes in England and Wales, and to make other provisions in lieu thereof," has been adopted, the said last-mentioned Act shall be superseded by this Act, and all lamps, lamp posts, gas pipes, fire engines, hose, and other property vested in the inspectors for the time being under the said Act, shall, in all existing districts under the "Public Health Act, 1848," and elsewhere upon the adoption of this Act, vest in the local board.

See the 3 & 4 Will. 4, c. 90, *ante*, 364.

Sect. 47. In any district where a vestry adopts the Act passed in the tenth year of the reign of her present Majesty, chapter seventy-four, and intituled "An Act to encourage the Establishment of Public Baths and Wash-houses," the local board may, at the option of the said vestry, be the commissioners for the execution of the said Act, and shall thereupon have all the powers, duties, rights and obligations of commissioners under the said Act; and all expenses incurred by the local board in carrying into execution the powers given to them by the said Act shall be defrayed out of general district rates, and all receipts by them by reason of the exercise of such powers shall be carried to the district fund account.

See the 10 & 11 Vict. c. 74, tit. "*Baths and Wash-houses*," Vol. I.; and see also the 29 & 30 Vict. c. 90, s. 43, *post*, 498.

Sect. 48. The sixty-first and so much of the sixty-second sections of the "Public Health Act, 1848," as empowers the local board to make bye-laws with respect to all slaughter-houses shall be repealed.

See the 11 & 12 Vict. c. 63, s. 62, *ante*, 458.

Sect. 50. The local board shall in non-corporate districts, with the consent of the owners and ratepayers of the district, to be expressed by resolution in the manner herein provided with respect to resolutions for the adoption of this Act, and in corporate districts shall, with the consent of two-thirds of the local board, have the power to do the following things or any of them within their district:

1. To provide a market place, and construct a market house and other conveniences, for the purpose of holding markets;
- To provide houses and places for weighing carts;
- To make convenient approaches to such market;
- To provide all such matters and things as may be necessary for the convenient use of such market;
- To purchase or take on lease land, and public or private rights in markets, and tolls, for any of the foregoing purposes;
- To take stallages, rents, and tolls in respect of the use by any person of such market house:

but no market or slaughter-house shall be established in pursuance of this section so as to interfere with any rights, powers, or privileges enjoyed within the district by any person, chartered joint stock or incorporated company, without his or their consent:

2. For the purpose of enabling any local board to establish markets in manner aforesaid, or to regulate markets already established in any corporate borough before the constitution of a local board therein, there shall be incorporated with this Act the provisions of "The Markets and Fairs Clauses Act, 1847," in so far as the same relate to markets:

With respect to the holding of the market or fair, and the protection thereof; and

With respect to the weighing goods and carts; and

## 28. Powers Incorporated.

c. 90) to be superseded by this Act.

Where vestries adopt provisions of 10 & 11 Vict. c. 74, local board to be the commissioners under that Act.

Sections of 11 & 12 Vict. c. 63, as to slaughter-houses repealed.

Power of local board to establish markets, with consent of owners and ratepayers.

Provisions of 10 & 11 Vict. c. 14, as to markets, etc., incorporated.

29. *General  
Superinten-  
denca.*

With respect to the stallages, rents, and tolls; and  
With respect to bye-laws:

subject to this proviso, that all tolls leviable by the local board in pursuance of this section shall be approved by one of her Majesty's principal secretaries of state.

See, as to resolutions for the adoption of the Act, sects. 12 and 13, *ante*, 428, 429.

See the 10 & 11 Vict. c. 14, *post*, tit. "*Markets and Fairs*."

It would seem that the setting up of a new market at a short distance from and in lieu of an ancient market is an establishment of a market within this section. (*Ellis v. Bridgenorth*, 2 Johns. & H. 67.) *Quære* whether the immemorial privilege of householders of erecting and hiring outstalls in front of houses in a market-place is a right within this proviso. (*Ellis v. Bridgenorth*, 2 Johns. & H. 67.)

Service of no-  
tices and repay-  
ment of costs  
under sects. 69,  
70, 71, 73, and  
74 of 10 & 11  
Vict. c. 34.

By the 24 & 25 Vict. c. 61, s. 11, in districts where the "Local Government Act, 1858," is in force, notices for alterations under the sixty-ninth, seventieth, and seventy-first sections, directions under the seventy-third section, and orders under the seventy-fourth section of the "Towns Improvement Clauses Act, 1847," may, at the option of the local board, be served upon owners instead of occupiers, or upon owners as well as occupiers, and the cost of works done under any of these sections may, when notices have been so served upon owners, be recovered from owners instead of occupiers, and when such cost is recovered from occupiers, they shall be entitled to make the same deduction from the rents payable for the premises where the work is done in respect of such cost as they are entitled to make in respect of private improvement rates by the "Public Health Act, 1848."

See the 10 & 11 Vict. c. 34, *Vol. V.*, tit. "*Towns Improvement*."

See sect. 91 of the 11 & 12 Vict. c. 63, *ante*, 480.

By the 29 & 30 Vict. c. 90, s. 43, local boards acting in execution of the "Local Government Act, 1858," may adopt the Act to encourage the establishment of public baths and washhouses, and any Act amending the same, for districts in which those Acts are not already in force, and when they have adopted the said Acts, they shall have all the powers, duties, and rights of commissioners under the said Acts, and all expenses incurred by any local board in carrying into execution the Acts referred to in this section shall be defrayed out of the general district rates, and all receipts by them under the said Acts shall be carried to the district fund account.

## 29. GENERAL SUPERINTENDENCE.

The 11 & 12 Vict. c. 63, s. 119, prohibiting the board from borrowing money without the consent of the general board of health is repealed, and other provisions are substituted by the 21 & 22 Vict. c. 98, s. 57, *ante*, 490.

Parties ag-  
grieved by pro-  
ceedings of local  
board as to re-  
covery of certain  
expenses may  
appeal to the  
general board.

Sect. 120. If in any case in which the local board are empowered to recover any expenses incurred by them in a summary manner, or to declare such expenses to be private improvement expenses, any person shall deem himself to be aggrieved by the decision of the said local board thereupon, he may, within seven days after notice of such decision, address a memorial to the said general board, stating the grounds of his complaint; and the said general board may make such order in the matter as to them may seem equitable, and the order so made shall be binding and conclusive upon the said local board; and if the said local board shall have proceeded to recover such expenses in a summary manner, the said general board may, if they shall think fit, direct the said

local board to pay to the person so proceeded against such sum as they may consider to be a just compensation for the loss, damage, or grievance thereby sustained by him.

29. *General Superintendence.*

See, as to the cases in which any expenses may be recovered summarily or declared to be private improvement expenses, sects. 49, 51, 54, 58, and 69, *ante*, 450, 451.

The memorials are now, by the 21 & 22 Vict. c. 98, s. 65, *post*, 510, to be addressed to one of her Majesty's principal secretaries of state, to whom the powers vested in the general board of health by this section are transferred.

The decision of the secretary of state is final as to the amount due for expenses and interest thereon. (*Wallington v. Willes*, 16 C. B., N. S. 797; 33 L. J., M. C. 233.)

Sect. 121. During any inquiry by a superintending inspector under this Act, he may and he is hereby empowered to summon before him any persons whomsoever, and to examine them upon oath or otherwise touching any matter relating to the purposes of the inquiry, and he may by any such summons require any parochial officer, or any officer of or acting under any corporation, guardians, or directors of the poor, and any commissioner, trustee, officer, or person acting under any local Act of Parliament in force within the district or place to which any such inquiry may relate, to produce before him any surveys, plans, sections, rate books, or other like documents which may by reason of their office be in their custody or control touching any matter relating to the purposes of such inquiry, and such inspector may examine, inspect, or take copies of any such books, surveys, plans, sections, and documents, or any of them, or part thereof; and whosoever wilfully disobeys any such summons, or prevents any such inspector from examining, inspecting, or taking copies as last aforesaid, or refuses to answer any question put to him by such inspector for the purposes of the said inquiry, shall be liable to a penalty not exceeding five pounds: Provided always, that no person shall be required to attend in obedience to any such summons unless the reasonable charges of his attendance shall have been paid or tendered to him; and no person shall be required in any case, in obedience to any such summons, to travel more than ten miles from his place of abode.

Superintending inspectors may summon witnesses, call for plans, rates, etc.

Inquiry by a superintending inspector is required by sects. 8, 75, and 82, *ante*, 420, 475, 472.

By the 21 & 22 Vict. c. 98, s. 8, whenever the sanction, consent, direction, or approval of the general board of health is required by law to the exercise of the powers of local boards of health or boards of improvement commissioners, such powers may, from the first day of September, 1858, be exercised without such sanction, consent, direction, or approval, or any sanction, consent, direction, or approval in lieu thereof, except in so far as is provided by this Act: Provided always, that all sanctions for the mortgage of rates given by the general board of health before the passing of this Act shall continue in full force and effect until all moneys, the borrowing of which is thereby sanctioned, have been borrowed.

Sect. 76. Every local board shall make an annual report, in such form and at such time as the secretary of state may from time to time direct, of all works executed by them during the preceding year, and of all sums received and disbursements made, under and for the purposes of this Act, and publish the same in some newspaper circulating in the district, and shall send a copy to the secretary of state.

Local board to report.

By the 24 & 25 Vict. c. 61, s. 14, in all cases in which prior to the passing of the "Local Government Act" all or any of the powers or

The sanction of the secretary of state substituted.



30. *Audit of Accounts.*

for the sanction of the general board of health, which has ceased to exist.

provisions of the "Public Health Act, 1848," relative to the borrowing of money or the mortgaging of rates, are repeated in any local Act of Parliament, or in which it is declared in and by such local Act that the same shall be read and construed as if all or any of such powers and provisions had been repeated therein, so as to confer thereunder upon any such local board of health or board of improvement commissioners powers corresponding with all or any of the borrowing or mortgaging powers contained in the "Public Health Act, 1848," and where the sanction, consent, direction, or approval of the general board of health is rendered requisite in or by any such local Act to the due exercise of any of the powers vested thereby in any local board of health or board of improvement commissioners, such powers or any of them shall and may be henceforth exercised with and under the sanction, consent, direction, and approval of one of her Majesty's principal secretaries of state, in lieu of the sanction, consent, direction, and approval of the general board of health aforesaid, and not otherwise.

## 30. AUDIT OF ACCOUNTS.

The 11 & 12 Vict. c. 63, s. 122, relating to the audit of the accounts of the board is repealed, and the following provisions are now substituted.

Provisions as to audit of accounts.

By the 21 & 22 Vict. c. 98, s. 60, the one hundred and twenty-second section of the "Public Health Act, 1848," shall be repealed, and in lieu thereof be it enacted as follows: where the mayor, aldermen, and burgesses of a borough are the local board, the accounts of the receipts and expenditure of the local board shall be audited and examined by the auditors of the borough, and shall be published in like manner and at the same time as the municipal accounts, and the auditors shall proceed in the audit after like notice and in like manner, shall have like powers and authorities, and perform like duties, as in the case of auditing the municipal accounts; and each of such auditors shall in respect of each audit be paid, out of the general district rates levied under this Act, such reasonable remuneration, not being less than two guineas for every day in which they are employed in such audit, as the local board from time to time appoints; and any order of the local board for the payment of any money may be removed by *certiorari*, and like proceedings may be had thereon as under section forty-four of the Act of the first year of her Majesty, chapter seventy-eight, with respect to orders of the council of a borough for payments out of the borough fund:

With respect to districts not boroughs, as follows:

1. The accounts of the receipts and expenditure of the local board shall be audited and examined once in every year, as soon as can be after the twenty-fifth day of March, by the auditor of accounts relating to the relief of the poor for the union in which the district or the greater part thereof is situate, unless such auditor is a member of the local board whose accounts he is appointed to audit, in which case such accounts shall be audited by such auditor of any adjoining union as may from time to time be appointed by the local board of health:

Power of allowance, disallowance, and surcharge.

And any auditor acting in pursuance of this section shall disallow every item of account contrary to law, and surcharge the same upon the person making or authorizing the making of the illegal payment, and shall certify the same to be due from such person, and upon application by any party aggrieved shall state in writing the reasons for his decision in respect of such disallowance or surcharge, and also of any allowance which he may have made; and any person aggrieved by disallowance made may apply to the Court of Queen's

Disallowances may be removed

Bench for a writ of *certiorari* to remove the disallowance into the said Court, in the same manner and subject to the same conditions as are provided in the case of disallowances by auditors under the laws for the time being in force with regard to the relief of the poor ; and the said Court shall have the same powers with respect to allowances, disallowances, and surcharges under this Act as it has with respect to disallowances or allowances by the said auditors ; or in lieu of such application any person so aggrieved may appeal to one of her Majesty's principal secretaries of state, who shall have the same powers in the case of the appeal as are possessed by the Poor Law Board in the case of appeals against allowances, disallowances, and surcharges by the said poor law auditors :

### 30. *Audit of Accounts.*

by *certiorari*  
into Court of  
Queen's Bench.

Appeal against  
disallowances.

2. Every sum certified to be due from any person by the auditor under this Act shall be paid by such person to the treasurer of the local board within fourteen days after the same shall have been so certified, unless there be an appeal against the decision ; and if such sum shall not be so paid, and there be no such appeal, the auditor shall recover the same from the person against whom the same shall have been certified to be due by the like process and with the like powers as in the case of sums certified upon the audit of the poor-rate accounts, and shall be paid by the local board all such costs and expenses, including a reasonable compensation for his loss of time incurred by him in such proceedings, as shall not be recovered by him from such person :

As to recovery  
of disallowances.

3. For the purpose of any audit of account under this Act, every auditor may, by summons in writing, require the production before him of all books, deeds, contracts, accounts, vouchers, and all other documents and papers which he may deem necessary, and may require any person holding or accountable for any such books, deeds, contracts, accounts, vouchers, documents, or papers to appear before him at any such audit or any adjournment thereof, and to make and sign a declaration as to the correctness of the same : and if any such person neglects or refuses so to do, or to produce any such books, deeds, contracts, accounts, vouchers, documents, or papers, or to make or sign such declaration, he shall incur for every neglect or refusal a penalty not exceeding forty shillings ; and if he falsely or corruptly makes or signs any such declaration, knowing the same to be untrue in any material particular, he shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury ; and such auditor shall in respect of each audit be paid, out of the general district rates levied under this Act, such reasonable remuneration, not being less than two guineas for every day in which he is employed in such audit, as the local board from time to time appoints, together with his expenses of travelling to and from the place of audit :

Power to auditor  
to require pro-  
duction of books.

4. Before each audit of accounts under this Act, the local board shall, after receiving from the auditor the requisite appointment, give twenty days' notice of the time and place at which the same will be made, by advertisement in some one or more of the public newspapers circulated in the district ; and a copy of the accounts to be audited, together with all rate books, account books, deeds, contracts, accounts, bills, vouchers, and receipts mentioned or referred to in such accounts, shall be deposited in the office of the local board, and be open, during office hours thereat, to the inspection of all persons interested, for seven days before the audit ; and all such persons shall be at liberty to take copies of or extracts from the same, without fee or reward ; and the production of the newspaper containing such notice shall be deemed to be sufficient proof of the notice of audit on any proceeding whatsoever :

Notice of audit.

31. *Arbitration.*

Report of auditor.

5. Within fourteen days after the completion of the audit, the auditor shall report upon the accounts audited and examined, and shall deliver such report to the clerk of the local board, who shall cause the same to be deposited in the office of the local board, and shall publish an abstract of such accounts in some one or more of the newspapers circulated in the district.

As to the making up of the accounts before the audit, see the 24 & 25 Vict. c. 61, s. 15, *infra*.

See the 1 Vict. c. 78, s. 44, tit. "*Corporations*," Vol. 1.

Accounts of improvement commissioners acquiring borrowing powers under "Local Government Act" to be subject to the provisions of that Act relating to audit.

By the 24 & 25 Vict. c. 61, s. 3, when any board of improvement commissioners acquires powers of rating or borrowing money under the fifteenth section of the "Local Government Act, 1858," the provisions in relation as to audit of that Act, or of any Act amending that Act, shall be in force in the case of such commissioners, as if such provisions were contained in the local Act under which they are constituted; and when the provisions as to audit of such local Act are repugnant to or inconsistent with those of the "Local Government Act," or any Act amending that Act, then the audit shall be conducted under the provisions of the last-mentioned Act.

See the "Local Government Act, 1858," s. 15, *ante*, 430, and for the provisions relating to audit, see sect. 60 of the same Act, *ante*, 500.

Making up accounts for audit.

Sect. 15. Seven clear days at least before the day fixed for the audit of accounts of any local board, the local board shall cause their rate books and other accounts to be made up and balanced, and the books and accounts so made up and balanced shall forthwith be deposited at the office of the said local board for the inspection of owners and ratepayers, and the notice of audit shall include a notice of such deposit of accounts; and any officer of a local board duly appointed in that behalf neglecting to make up such books and accounts, or altering such books and accounts, or allowing them to be altered when so made up, or refusing to allow inspection thereof, shall be liable on conviction thereof to forfeit forty shillings; and it shall be lawful for any ratepayer or owner of property in the district to be present at the audit of the accounts of the local board, and to make any objection to such accounts before the auditor; and such ratepayers and owners shall have the same right of appeal against allowances by an auditor, as they have by law against disallowances.

## 31. ARBITRATION.

Mode of referring to arbitration.

By the 11 & 12 Vict. c. 63, s. 123, in case of dispute as to the amount of any compensation to be made under the provisions of this Act (except where the mode of determining the same is specially provided for), and in case of any matter which by this Act is authorized or directed to be settled by arbitration, then, unless both parties concur in the appointment of a single arbitrator, each party, on the request of the other, shall appoint an arbitrator, to whom the matter shall be referred; and every such appointment when made on the behalf of the local board of health shall (in the case of a non-corporate district) be under their seal and the hands of any five or more of their number, or under the common seal in case of a corporate district, and on the behalf of any other party under his hand, or if such party be a corporation aggregate under the common seal thereof; and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same; and after the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such matter shall have arisen, and notice in writing by

one party who has himself duly appointed an arbitrator to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fail to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties; and the award of any arbitrator or arbitrators appointed in pursuance of this Act shall be binding, final, and conclusive upon all persons, and to all intents and purposes whatsoever.

By the 21 & 22 Vict. c. 98, s. 64, *post*, 504, arbitration is to be confined to cases involving more than £20. Sums under £20 may be recovered in the County Court; see the 24 & 25 Vict. c. 61, s. 24, *post*, 511.

Where A. claimed compensation for damage sustained by the board having made a sewer through his land under sect. 45, and appointed an arbitrator, and the board declined to appoint an arbitrator on the ground that A. had not sustained any damage, because his property was benefited by the making of the sewer, it was held that this was a case in which the amount of compensation only and not the liability to make compensation was disputed; and the Court upheld an *ex parte* award made by the umpire appointed by A. (*Bradby, in re*, 4 *El. & Bl.* 1014; 24 *L. J.*, *Q. B.* 239.)

Where the liability to compensate is disputed, the proper proceeding is by *mandamus*. (*Reg. v. Burslem*, 28 *L. J.*, *Q. B.* 345.)

Sect. 124. If before the determination of any matter so referred any arbitrator die, or refuse or become incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if he fail so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed *ex parte*; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made; and in case a single arbitrator die, or become incapable to act, before the making of his award, or fail to make his award within twenty-one days after his appointment, or within such extended time, if any, as shall have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this Act, as if no former reference had been made.

Where the time had not been extended, but the reference proceeded notwithstanding, and the board attended all through under protest, it was held that the board had not, by proceeding with the reference, waived the objection to the non-extension of the time. (*Ringland v. Lowndes*, 33 *L. J.*, *C. P.* 337, *Exch. Ch.* overruling the decision of the Court of Common Pleas.)

Sect. 125. In case there be more than one arbitrator, the arbitrators shall, before they enter upon the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire die, or become incapable to act, the arbitrators shall forthwith appoint another person in his stead; and in case the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Court of general or quarter sessions shall, on the application of any such party, appoint an umpire; and the award of the umpire shall be binding, final, and conclusive upon all persons and to all intents and purposes whatsoever; and in case the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time, if any, as shall have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire; and the provisions of this Act with respect to the time for making an award, and with respect to extending to the same in the case of a single arbitrator, shall apply to an umpirage.

31. Arbitration.

Death, etc., of one of several arbitrators;

of single arbitrator.

Appointment of umpire by the parties;

by quarter sessions.

### 31. Arbitration.

Arbitrators who have failed to make their award within the twenty-one days may, nevertheless, appoint an umpire after the expiration of that period, although they have not enlarged the time (*Holdsworth v. Barsham*, 31 *L. J.*, *Q. B.*, 145); provided such appointment be within the time limited by sect. 126 for making the umpirage. (*Holdsworth v. Wilson*, 4 *B. & S.* 1; 32 *L. J.*, *Q. B.* 289.)

Where the Court named an umpire, but, as his consent to act had not then been obtained, no minute of the order was made by the clerk of the peace, and no formal order was drawn up, it was held that no appointment had been made, and that, the claimant having treated the application as a nullity, and applied again at the next quarter sessions, a regular order for the appointment of the umpire then made was valid. (*Ringland v. Lowndes*, 33 *L. J.*, *C. P.*, 25.)

As to the effect of proceeding with an arbitrator under protest, see *Ringland v. Lowndes*, *ante*, 503.

Where the umpire made his award after twenty-one days from his appointment, and without extending the time, the award was held bad. (*Killett v. Tranmere Local Board*, 13 *W. R.* 207.)

Time within which award must be made.

Sect. 126. The time for making an award under this Act shall not be extended beyond the period of three months from the date of the submission or from the day on which the umpire shall have been appointed (as the case may be).

The provisions of the 17 & 18 Vict. c. 125, s. 15, relating to the power of the Court to enlarge the time for making an award have no application to an award under this Act; and after the time limited has elapsed, the Court has no power to enlarge. (*Killett v. Tranmere Local Board*, 13 *W. R.* 207.)

Power to arbitrator to require production of documents.

Sect. 127. Any arbitrator, arbitrators, or umpire, appointed by virtue of this Act, may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath; and the costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or of the umpire (in case the matters referred are determined by an umpire under the power herein-before contained in that behalf); and any submission to arbitration under the provisions of this Act may be made a rule of any of the superior courts, on the application of any party thereto.

As to costs of reference.

Submission may be made a rule of Court.

Where the umpire orders the costs of the reference to be borne by the board without ascertaining their amount, an action will lie to recover them after a bill for the amount has been delivered; and, although the party to pay may have the costs taxed, yet the taxation is not a condition precedent to the right of the other party to bring an action for them. (*Holdsworth v. Wilson*, 4 *B. & S.* 1; 32 *L. J.*, *Q. B.* 289, over-ruling *Holdsworth v. Barsham*, 31 *L. J.*, *Q. B.* 145.)

Declaration to be made by arbitrator and umpire.

Sect. 128. Before any arbitrator or umpire shall enter upon any such reference as aforesaid, he shall make and subscribe the following declaration before a justice of the peace; (that is to say,)

*I, A. B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the "Public Health Act, 1848."* A. B.

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire shall wilfully act contrary to such declaration he shall be guilty of a misdemeanour.

Arbitration to be confined to cases involving more than £20.

By the 21 & 22 Vict. c. 98, s. 64, all questions referable to arbitration under the "Public Health Act, 1848," or this Act, or any Act, incorporated therewith, may, when the amount in dispute is less than twenty

pounds, be determined before two justices in a summary manner, but the justices may, if they think fit, require that the work in respect of which the claim of the local board is made, and the particulars of the claim, be reported on to them by any competent surveyor, not being the surveyor of the local board; and the justices may determine the amount of costs incurred on that behalf, and by whom such costs or any part of them shall be paid.

See the 11 & 12 Vict. c. 63, ss. 123-128, *ante*, 502-504.

### 32. Legal Proceedings.

#### 32. LEGAL PROCEEDINGS.

By the 11 & 12 Vict. c. 63, s. 129, in all cases in which the amount of any damages, costs, or expenses is by this Act directed to be ascertained or recovered in a summary manner, the same may be ascertained by and recovered before two justices, together with such costs of the proceedings as the justices may think proper; and if the sums adjudged be not paid by the party against whom the adjudication is made, the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication; and any penalty imposed by or under the authority of this Act, or any bye-law made under this Act, the recovery whereof is not otherwise expressly provided for, may, upon proof on oath of the offence in respect of which the penalty is alleged to have been incurred, be recovered before two justices, together with such costs of the proceedings as they may think proper; and if the sums adjudged be not paid by the party against whom the adjudication is made, the same may be levied by distress and sale of his goods and chattels, by warrant under the hands and seals of the justices making the adjudication; and such justices or either of them may order that any offender convicted as last aforesaid be detained and kept in safe custody until return can be conveniently made to the last-mentioned warrant, unless he give sufficient security, by way of recognizance or otherwise, for his appearance on the day appointed by the return, such day not being more than eight days from the time of taking the security; and if before issuing such warrant, or upon the return thereof, it appear to the satisfaction of the last-mentioned justice that no sufficient distress can be had within their jurisdiction, they may, by warrant under their hands and seals, cause the offender to be committed to gaol, there to remain, without bail, for any term not exceeding three months, unless such penalty and costs be sooner paid.

Recovery of damages, etc.

See also the 11 & 12 Vict. c. 43, ss. 18 and 21, *post*, tit. "Orders," by which similar powers are given in cases of non-compliance with orders for the payment of money. The provisions of that Act will be applicable wherever no other course is directed by this Act.

See further provisions as to legal proceedings in the 21 & 22 Vict. c. 98, ss. 61-67, *post*, 510, 511.

The justices have no jurisdiction where the bye-law is not warranted by the statute, even although it may have been allowed by the secretary of state; and if they convict in such a case, the Court of Queen's Bench will grant a *certiorari* to bring up the conviction for the purpose of quashing it. (*Reg. v. Rose*, 5 *El. & Bl.* 49; 24 *L. J., M. C.* 130.)

See *Reg. v. Brodhurst*, *ante*, 418, as to the justices to whom jurisdiction under this section is given.

Sect. 130. The justices before whom any person is convicted of any offence against the provisions of this Act may cause the conviction to be drawn up according to the form and directions contained in the schedule (E.) (see the form, *post*) annexed to this Act, or to the like effect; and any conviction so drawn up shall be valid and effectual to all intents and purposes.

Form of conviction.

Sect. 131. In proceeding before any justice or justices under the pro- Mode of proceed-

### 32. Legal Proceedings.

ing before justices.

Distress how to be levied;

not unlawful for want of form.

visions of this Act, in any case in which the mode of proceeding is not specially prescribed, any one justice may summon the party charged to appear before the justice or justices by whom the matter is to be determined at a time and place to be named; and upon the appearance of the party charged, or in his absence upon proof of service of the summons upon him personally, or by leaving a copy thereof at his last known place of abode or business, the last-mentioned justice or justices may hear and determine the matter, and for that purpose examine the parties or any of them, and their witnesses, on oath; and the costs of all such proceedings shall be in the discretion of the last-mentioned justice or justices; and where in this Act any sum of money whatsoever is directed to be levied by distress and sale of the goods and chattels of any party, the overplus arising from such sale shall, after satisfying such sum, and the costs and expenses of the distress and sale, be returned to him, on demand; and no distress levied under the authority of this Act shall be unlawful, nor shall any party making the same be a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall he be a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction in an action upon the case.

By the 29 & 30 Vict. c. 90, s. 48, *post*, any local board, sewer authority, or nuisance authority may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such board or authority, and such person being so authorized shall be at liberty to institute and carry on any proceeding which the nuisance authority is authorized to institute and carry on under the "Nuisance Removal Acts" or this Act.

Justices, though members of local board, may act under this Act.

By the 11 & 12 Vict. c. 63, s. 132, justices of the peace, being also members of any local board of health, may, if acting in petty sessions, notwithstanding their being such members, exercise the jurisdiction vested in them as such justices under this Act.

Common informers not to sue without consent of attorney-general.

Sect. 133. No proceedings for the recovery of any penalty incurred under the provisions of this Act shall be had or taken by any person other than by a party grieved, or the local board of health in whose district the offence is committed, or by the churchwardens and overseers of the poor (where any such penalty is directed to be paid to the churchwardens and overseers of the poor); without the consent in writing of her Majesty's attorney-general first had and obtained; and that no such penalty shall be recovered unless proceedings for the recovery thereof shall have been commenced within six calendar months after the commission or occurrence of the offence upon which the penalty attaches; and if the application of the penalty be not otherwise provided for, one half thereof shall go to the informer, and the remainder to the local board of health of the district in which the offence was committed: Provided always, that if the said local board be the informer they shall be entitled to the whole of the penalty recovered; and all penalties or sums recovered on account of any penalty by them shall be paid over to the treasurer, and shall by him be placed to the district fund account mentioned in this Act.

Proceedings for penalties to be taken within six months.

Application of penalties.

Proceedings may be taken by the churchwardens and overseers in certain cases where there is no local board of health. See sect. 79, *ante*, 470.

See, as to the district fund account, sect. 87, *ante*, 478.

The grievance intended by this section is one peculiar and personal to the party, and not such as he suffers in common with the rest of the ratepayers. Thus, where a member of the company of proprietors of the Margate Pier being also a member of the Margate local board voted on

a question in which the company was interested contrary to the 19th section, it was held that an inhabitant and ratepayer was not as such a party grieved within the meaning of this section. (*Boyce v. Higgins*, 14 *O. B.* 1; 23 *L. J.*, *O. P.* 5.) So, also, where a member acts without being duly qualified, a ratepayer who was a candidate at the election, and would have been elected but for the candidature of the unqualified member, is not a party grieved; and, if he brings an action for penalties without the consent of the attorney-general, the want of such consent is a ground for staying the proceedings after trial, although the objection might also have been taken by plea or demurrer. A declaration for penalties in such a case, which does not allege such consent, is bad on motion in arrest of judgment. (*Hollis v. Marshall*, 2 *H. & N.* 755; 27 *L. J.*, *Ex.* 235.)

Sect. 134. Notwithstanding the liability of any person to any penalty under the provisions of this Act, he shall not be relieved from any other liability to which he would have been subject if this Act had not been passed.

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Liability to penalty not to relieve from other liabilities.

Sect. 135. Any person who shall think himself aggrieved by any rate made under the provisions of this Act, or by any order, conviction, judgment, or determination of or by any matter or thing done by any justice or justices, in any case in which the penalty imposed or the sum adjudged shall exceed the sum of twenty shillings, may appeal to the Court of general or quarter sessions holden next after the making of the rate objected to, or accrual of the cause of complaint; but the appellant shall not be heard in support of the appeal unless within fourteen days after the making and publication of the rate appealed against, or accrual of the cause of complaint, he give to the local board of health or justice or justices by whose act he may think himself aggrieved notice in writing stating his intention to bring such appeal, together with a statement in writing of the grounds of appeal; and the said Court, upon hearing and finally determining the matter of the appeal, shall and may, according to its discretion, award such costs to the party appealing or appealed against as they shall think proper, and its determination in or concerning the premises shall be conclusive and binding on all persons to all intents and purposes whatsoever: Provided always, that if there be not time to give such notice and enter into such recognizance as aforesaid before the sessions, holden as last aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for, the next sessions at which the appeal can be heard: Provided also, that on the hearing of the appeal no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid.

Appeal to quarter sessions.

It would seem that the "sum adjudged" means not the "sum adjudicated to be paid," but the "sum adjudicated upon;" and therefore there may be an appeal against an order of justices finding a rate exceeding 20s. to be due from the defendant, and directing a distress warrant to issue. (*Ricardo v. Maidenhead Local Board*, 2 *H. & N.* 257; 27 *L. J.*, *M. C.* 73.)

Sect. 136. The said Court of general or quarter sessions shall upon appeals under this Act against any rate have the same power to amend or quash any rate or assessment, and to award costs between the parties to the appeal, as is or may by law be vested in any Court of general or quarter sessions with respect to amending or quashing any rate or assessment, or awarding costs, upon appeals with respect to rates for the relief of the poor; and the costs awarded by the said Court under this Act may be recovered in the same manner in all respects as costs awarded upon the last-mentioned appeals: Provided always, that, notwithstanding the quashing of any rate appealed against, all moneys charged by such rate shall, if the Court before whom the appeal is

Power of sessions upon appeals against rates.



### 32. *Legal Proceedings.*

No rate or proceeding to be quashed for want of form, etc.

heard think fit so to order, be levied as if no appeal had been made, and such moneys, when paid, shall be taken as payment on account of the next effective rate for the purposes in respect of which the quashed rate was made.

Sect. 137. No rate, nor any proceeding to be had touching the conviction of any offender against this Act, nor any order, award, or other matter or thing whatsoever made, done, or transacted in or relating to the execution of this Act, shall be vacated, quashed, or set aside for want of form, or be removed or removable by *certiorari* or other writ of process whatsoever into any of the superior courts.

But a conviction may, nevertheless, be removed by *certiorari*, if the justice has acted altogether without jurisdiction. (*Reg. v. Ward*, 5 *El. & Bl.* 49; *S. C. nom. Reg. v. Rose*, 24 *L. J., M. C.*, 130.)

Proceedings in case of noncorporate districts.

Actions, etc., in name of clerk.

Mode of describing property of local board.

Actions, etc., not to abate.

Clerk to be reimbursed expenses.

Sect. 138. The local board of health of any noncorporate district may sue and be sued in the name of the clerk for the time being for or concerning any contract, matter, or thing whatsoever relating to any property, works, or things vested or to become vested in them by reason of the provisions of this Act, or relating to any matter or thing whatsoever entered into or done, or intended to be entered into or done by them, under the provisions of this Act; and in any action of ejectment brought or prosecuted by such local board it shall be sufficient to lay the demise in the name of the said clerk, and in proceedings by or on the part of such local board against any person for stealing or wilfully injuring or otherwise improperly dealing with any property, works, or things belonging to them or under their management, it shall be sufficient to state generally that the property or thing in respect of which the proceeding is instituted is the property of the said clerk, and all legal proceedings by, on the part of, or against such local board, under this Act may be preferred, instituted, and carried on in his name; and no proceedings whatever shall abate or be discontinued by the death, resignation, or removal of the clerk, or by reason of any change or vacancy in such local board by death, resignation or otherwise: Provided always, that the clerk in whose name any such action or suit, complaint, information, or proceeding may be brought, preferred, or instituted, or defended as aforesaid, shall be fully reimbursed, out of the general district rates to be levied under this Act, all such costs, charges, damages, and expenses as he shall or may be or become liable to pay, sustain, or be put unto by reason of his name being so used.

See, as to the general district rates, sect. 87, *ante*, 478.

A municipal corporation which is constituted a local board may be sued on a contract entered into by them under their common seal. (*Nowell v. The Mayor, &c., of Worcester*, 9 *Exch.* 457; 23 *L. J., Exch.*, 139.)

Where in a contract entered into for works to be done for a local board five members of the board covenanted for themselves, their heirs, executors, and administrators, but the contract professed to be entered into by them for and on behalf of the local board, it was held that the clerk of the board was, by virtue of this section, the proper person to sue the contractor for a breach of the contract. (*Cobham v. Holcombe*, 8 *C. B.*, *N. S.*, 815.) Now, however, by the 29 & 30 *Vict. c. 90*, s. 46, *post*, it is enacted that "the following bodies, that is to say, local boards, sewer authorities, and nuisance authorities; if not already incorporated, shall respectively be bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on such bodies respectively in their several characters of local boards, sewer authorities, or nuisance authorities."

Notice of action.

Sect. 139. No writ or process shall be sued out against or served upon

any superintending inspector, or any officer or person acting in his aid, or under the direction of the general board of health, nor against the local board of health, or any member thereof, or the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under the direction of the said local board, for anything done or intended to be done under the provisions of this Act, until the expiration of one month next after notice in writing shall have been delivered to him, or left at their or his office or usual place of abode, clearly and explicitly stating the cause of action, and the name and place of abode of the intended plaintiff, and of his attorney or agent in the cause; and upon the trial of any such action the plaintiff shall not be permitted to go into evidence of any cause of action which is not stated in the last-mentioned notice; and unless such notice be proved the jury shall find for the defendant; and every such action shall be brought or commenced within six months next after the accrual of the cause of action, and not afterwards, and shall be laid and tried in the county or place where the cause of action occurred, and not elsewhere; and the defendant shall be at liberty to plead the general issue, and give this Act and all special matter in evidence thereunder; and any person to whom any such notice of action is given as aforesaid may tender amends to the plaintiff, his attorney or agent, at any time within one month after service of such notice, and in case the same be not accepted may plead such tender in bar, and (by leave of the Court) with the general issue or other plea or pleas; and if upon issue joined upon any plea pleaded to the whole action the jury find generally for the defendant, or if the plaintiff be nonsuited or discontinued, or if judgment be given for the defendant, then the defendant shall be entitled to full costs of suit, and have judgment accordingly; and in case amends have not been tendered as aforesaid, or in case the amends tendered be insufficient, the defendant may, by leave of the Court, at any time before trial, pay into Court, under plea, such sum of money as he may think proper, and (by the like leave) may plead the general issue or other plea or pleas, any rule of Court or practice to the contrary notwithstanding.

### 32. *Legal Proceedings.*

Limitation of actions.

Venue.

General Issue

Tender of amends, etc.

Money may be paid into Court.

See, as to the meaning of the words "acting under the direction of the local board," *Newton v. Ellis*, 5 *El. & Bl.* 115; 24 *L. J.*, Q. B. 337.

This section does not take away the common-law power of the Court to change the venue. (*Itchin Bridge Co. v. Southampton Local Board*, 27 *L. J.*, Q. B. 128; 8 *El. & Bl.* 803.)

Where an action was brought against a local board for having left unfenced a goit adjoining a public footpath within their district by reason of which the plaintiff's husband, while using the footpath, fell into the goit and was drowned, it was held that the board were entitled to notice of action under this section, the alleged cause of action being the continued non-performance of a duty imposed upon them by the Act, and, therefore, a thing "done or intended to be done" under the provisions of the statute. (*Wilson v. Mayor and Corporation of Halifax*, *Law Rep.* 3; *Ex.* 114; 37 *L. J.*, *Ex.* 44.)

Sect. 140. No matter or thing done or contract entered into by the local board of health, nor any matter or thing done by any superintending inspector, or any member of the said local board, or by the officer of health, clerk, surveyor, inspector of nuisances, or other officer or person whomsoever acting under the direction of the said local board, shall, if the matter or thing were done or the contract were entered into *bonâ fide* for the purpose of executing this Act, subject them or any of them personally to any action, liability, claim, or demand whatsoever; and any expense incurred by any such local board, member, officer of health, clerk, surveyor, inspector of nuisances, or other officer or person acting as last aforesaid, shall be borne and repaid out of the general district rates levied under the authority of this Act.

Persons acting in execution of Act not to be personally liable.

See *Bailey v. Cuckson* (7 *W. R.* 16), *ante*, 478.

### 32. *Legal Proceedings.*

Notices by local boards to be signed by clerk.

Expenses due from owners to be a charge on premises.

By the 21 & 22 Vict. c. 98, s. 61, any summons, demand, or notice, or other such document under the "Public Health Act, 1848," or any supplemental Act or this Act, may be in writing or print, or partly in writing and partly in print, and if the same require authentication by the local board, the signature thereof by the clerk to the local board shall be sufficient authentication.

Sect. 62. Where the local board have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable, either by application of or agreement with the owner, or by the "Public Health Act, 1848," or any Act incorporated therewith, or this Act, the same may be recovered from the person who is owner of such premises when the works are completed for which such expenses have been incurred, in the manner provided by the "Public Health Act, 1848," and such expenses shall be a charge on the premises in respect of which they were incurred, and shall bear interest at the rate of five pounds per centum per annum till payment thereof. In all summary proceedings by a local board for the recovery of expenses incurred by them in works of private improvement, the time within which such proceedings may be taken shall be reckoned from the date of the service of notice of demand.

See further provisions for the recovery of these expenses in the 24 & 25 Vict. c. 61, s. 23, *ante*, 487.

This section abrogates *Eddleston v. Francis* (7 C. B., N. S. 586), in which it was held that the time ran from the completion of the work and notice of the amount due, and not from the demand of payment.

If the notice has been served on the person *de facto* receiving the rents, the person who is owner when the works are completed will be liable to pay for them, although his title to the premises had accrued prior to the service of the notice, and although the notice was not served on him, and he had no notice of it until after the completion of the works. (*Peck v. Waterloo and Seaforth Local Board*, 2 H. & C. 709; 33 L. J., M. C. 11.)

The interest runs from the time that the amount due is ascertained. (*Wallington v. Willes*, 16 C. B., N. S. 797; 33 L. J., M. C. 233.)

Apportionment of expenses payable by owners to be conclusive after three months from notice given to them of the amount.

Sect. 63. Notwithstanding anything in the Public Health Act contained, in all cases where by such Act the local board shall have incurred expenses, for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable by the "Public Health Act, 1848," or any Act incorporated therewith, or by this Act, and such expenses have been settled and apportioned by the surveyors as payable by such owner, such apportionment shall be binding and conclusive upon such owner, unless within the expiration of three months from the time of notice being given by the local board or their surveyor of the amount of the proportion so settled by the said surveyor to be due from such owner he shall by written notice dispute the same.

The six months limited by the 11 & 12 Vict. c. 43, s. 11, for making or laying a complaint or information before justices for the recovery of the expenses summarily begin to run, not from the date of the apportionment, but at the expiration of the three months within which the owner may dispute his liability. (*Jacomb v. Dodgson*, 3 B. & S. 461; 32 L. J., M. C. 113.)

Sect. 64, see *ante*, 504.

Memorials in respect of private improvement charges.

Sect. 65. Memorials under the one hundred and twentieth section of the "Public Health Act, 1848," from and after the 1st day of September, 1858, shall be addressed to one of her Majesty's principal secretaries of State, who shall have the same powers in respect thereof as are vested in the general board of health by the said section.

See the 11 & 12 Vict. c. 63, s. 120, *ante*, 498; and see sect. 81 of this Act, *post*, 513.

Sect. 66. If any person wilfully injures any works or materials belonging to any local board, he shall in cases where no other penalty is provided by the "Public Health Act, 1848," or any Act incorporated therewith, incur for every such offence a penalty not exceeding five pounds, to be recovered in a summary manner.

83. *Provisional Orders, etc.*

Penalty on injury to works, etc., of local board.

See the 11 & 12 Vict. c. 63, s. 129, *et seq.*, *ante*, 505, as to the recovery of penalties.

See also the 29 & 30 Vict. c. 90, s. 45, *post*, tit. "Nuisance," which enacts that, if any person wilfully damages any works or property belonging to any local board, sewer authority or nuisance authority, he shall be liable to a penalty not exceeding £5. By sect. 54 of the same Act, penalties under that Act, and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by the 11 & 12 Vict. c. 43, or any Act amending the same.

Sect. 67. All penalties incurred in any corporate borough, and made payable to the local board of health by the "Public Health Act, 1848," or any Act incorporated therewith, or this Act, or any Act of which the powers are to be executed by a local board, shall be payable to the district fund account, any Act to the contrary notwithstanding.

Penalties to be payable to district fund account.

By the 24 & 25 Vict. c. 61, s. 24, proceedings for the recovery of demands below twenty pounds, which local boards are now empowered by law to recover in a summary manner, may, at the option of the local board, be taken in the County Court as if such demands were debts within the cognizance of such Courts.

Demands below £20 may be recovered in County Courts.

### 33. PROVISIONAL ORDERS AND POWERS OF SECRETARY OF STATE.

By the 21 & 22 Vict. c. 98, s. 77, the one hundred and forty-first section of the "Public Health Act, 1848," shall be repealed, and in lieu thereof be it enacted as follows: Whenever it appears desirable to the local board of any district, or to the majority of the owners and ratepayers in any parish, township, hamlet, or place maintaining its own roads or its own poor, adjoining any district, or to the majority of owners and ratepayers in any part of a district, such majorities to be ascertained in the way herein provided for voting with respect to the adoption of this Act,—

Petition for incorporation with or separation from district, or for repeal, etc., of local Acts.

That any portion of such parish, township, hamlet, or place should be incorporated with the district, or that such part of the district should be separated therefrom.

Or whenever it appears to the local board of any district desirable,—

That provision should be made for the future execution of any local Acts in force within such district, having relation to the purposes of this Act, and not conferring powers or privileges upon corporations, companies, undertakers, or individuals, for their own pecuniary benefit; or that any such Acts, or any exemptions from rating derived therefrom, or any provisional order or Order in Council applying the "Public Health Act, 1848," or Act confirming such provisional orders, should be wholly or partially repealed or altered:

1. They may present a petition to one of her Majesty's principal secretaries of state, praying for such incorporation, separation, provision, repeal, and alteration as aforesaid, or for any of such things, and such petition shall be supported by such evidence as the said secretary requires:
2. Upon the receipt of any such petition inquiry may be directed in the district in respect of the several matters mentioned in the petition,

Power of secretary of state on

### 33. *Provisional Orders, etc.*

receipt of petition;  
to issue order, and obtain consent of district.

Consents how testified.

Provision as to meetings of part or place.

Secretary of State to obtain confirmation of order.

after giving fourteen days' notice of the time, place, and subject of the inquiry :

3. It shall be lawful for any of her Majesty's principal secretaries of state to issue a provisional order in relation to the several things mentioned in the petition, and either in accordance with the prayer thereof, or with such modifications as may be requisite ; and when the order provides for the incorporation of a portion of any such parish, township, hamlet, or place with the district, or the separation of any part from the district, an inspector shall proceed to the district for the purpose of obtaining the consent to such order of the place of which it is proposed that a portion should be incorporated, or of the part to be separated, and also, if such order provide for any such incorporation, the consent of the petitioning district :
4. The consent of the petitioning district to such order shall be testified by a resolution of the local board of such district, and the consent of any place or part by a resolution passed by a majority of the ratepayers resident in any such place or part assembled at a meeting convened for the purpose ; and the inspector shall, for the purpose of obtaining such consents, have power to convene meetings of the local board of any district, or meetings of the ratepayers of any place or part, with fourteen days' notice of the time, place, and subject of such meetings, and to do all such matters and things as may be expedient for that purpose :
5. In the case of a meeting of the ratepayers of any place or part, the ratepayers present shall elect a chairman ; and a declaration by the chairman that the opinion of the meeting is in favour or against any resolution, as the case may be, shall, in the absence of proof to the contrary, be sufficient evidence that the resolution is passed : the inspector shall have power to attend any such meeting :
6. Whenever such consents as aforesaid have been given in the cases in which they are hereinbefore required, the said secretary of state shall, as soon as conveniently may be, take all necessary steps for the confirmation of such order by Act of Parliament ; but previously to such confirmation it shall not be of any validity whatever, and every Act of Parliament confirming such order shall be deemed a public general Act. In case any petition shall be presented to either House of Parliament against any provisional order framed in pursuance of this Act, in the progress through Parliament of the Bill confirming the same, the Bill, so far as it relates to the order so petitioned against, may be referred to a select committee, and the petitioner shall be allowed to appear and oppose as in the case of private bills.

See, as to what may be done by a provisional order, *Clayton v. Fenwick* (6 *El. & Bl.* 114 ; 25 *L. J.*, *Q. B.* 226) ; and, as to the way provided for voting with respect to the adoption of the Act, see sects. 12 & 13, *ante*, 428, 429.

Sect. 78, see *ante*, 491.

Secretary of State to provide for execution of Act.

Sect. 79. It shall be lawful for the secretary of state to report annually to Parliament on the execution of this Act, to make or direct such inquiries as are directed by this Act, and to appoint from time to time such officers, clerks, and servants as he may require for the purposes of this Act, and at his pleasure to remove any such officers, clerks, or servants ; and the commissioners of her Majesty's Treasury shall fix the salaries and allowances of such officers, clerks, and servants.

Powers for inquiry directed by Secretary of State.

Sect. 80. Any officer directed by one of her Majesty's principal secretaries of state to inquire into any matter into which such secretary is empowered to direct inquiry under this Act shall, for the purposes of such inquiry, have all the powers vested in superintending inspectors by

the one hundred and twenty-first section of the "Public Health Act, 1848."

34. *Miscellaneous.*

See the 11 & 12 Vict. c. 63, s. 121, *ante*, 499.

Sect. 81. All orders made by one of her Majesty's principal secretaries of state in pursuance of this Act shall be binding and conclusive in respect of the matters to which they refer; and any such secretary may make orders as to the costs of any appeal to him under this Act, and the parties by whom such costs are to be borne: and every such order may be made a rule of one of the Superior Courts of law, on the application of any party named therein.

Orders of secretary of state to be binding.

Where at a meeting for the adoption of the Act the chairman refused to divide the meeting, and on appeal the secretary of state decided that he was not bound to divide, and that the vote was valid, it was held that his decision was final. (*Ex parte Bird*, 1 *El. & El.* 931; 28 *L. J.*, *Q. B.* 223.) So also the decision of the secretary of state under the 11 & 12 Vict. c. 63, s. 120, upon the amount of the expenses incurred by a local board and the interest thereon, is final. (*Wallington v. Willes*, 16 *C. B.*, *N. S.* 797; 33 *L. J.*, *M. C.* 233.)

By the 24 & 25 Vict. c. 61, s. 27, the provision for the repayment of costs, charges, and expenses incurred by the secretary of state in relation to any provisional order under the seventy-fifth section of the "Local Government Act, 1858," shall extend to all provisional orders under the said Act.

Repayment of costs by provisional orders.

See the 21 & 22 Vict. c. 98, s. 75, *ante*, 475.

#### 34. MISCELLANEOUS.

The 11 & 12 Vict. c. 63, s. 141, relating to orders in Council, is repealed, and other provisions are substituted, by the 21 & 22 Vict. c. 98, s. 77, *ante*, 511.

Sect. 142. All Orders in Council under this Act shall take effect and be in full force and operation within the district to which they apply from and after a day which shall be specified in such orders for that purpose; and a copy of every such order shall be published in the *London Gazette*, and shall be laid before Parliament in the month of January in every year, if Parliament be then sitting, or if Parliament be not then sitting, then within one week after the next meeting thereof; and whenever any provisional order of the general board of health is submitted to Parliament for confirmation, the said general board shall present to both Houses of Parliament a copy of all reports of any superintending inspector with respect to the parts to which the provisional order relates, and of all memorials forwarded to the said general board with respect to such reports.

Publication of Orders in Council, etc.

Reports of superintending inspectors, etc., to be laid before Parliament.

Sect. 143. In case it shall become necessary to enter, examine, or lay open any lands or premises for the purpose of making plans, surveying, measuring, taking levels, examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises shall refuse to permit the same to be entered upon, examined, or laid open for the purposes aforesaid or any of them, the local board of health may, upon notice to such owner or occupier, apply to two justices for an order authorizing the members of such local board, and the superintending inspector, surveyor, and inspector of nuisances, or any of them, to enter, examine, and lay open the said lands and premises for the purposes aforesaid or any of them, and if no sufficient cause shall be shown against the same, the said justices may make an order authorizing the same accordingly, and thereupon any superintending inspector, the local board of health, or any member thereof, the surveyor, and inspector of nuisances, and any person autho-

Entry upon lands for the purposes of this Act.

34. *Miscellaneous.*

rized by any such superintending inspector, local board, surveyor, or inspector of nuisances, may, at all reasonable times between the hours of ten in the forenoon and four in the afternoon, enter, examine, or lay open the lands or premises mentioned in such order, for such of the said purposes as shall be specified in the said order, without being subject to any action or molestation for so doing: Provided always, that, except in case of emergency, no entry shall be made or works commenced under the powers of this enactment unless twenty-four hours at the least previously thereto notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

Compensation in case of damage by local board.

Sect. 144. Full compensation shall be made, out of the general (or special) district rates to be levied under this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act; and in case of dispute as to amount the same shall be settled by arbitration in the manner provided by this Act; or, if the compensation claimed do not exceed the sum of twenty pounds, the same may be ascertained by and recovered before justices in a summary manner.

Where a nuisance is caused by a discharge from a sewer which has been negligently and improperly constructed, the proper remedy would seem to be by action against the board, and not by a claim for compensation under this section. (*The Southampton and Itchin Floating Bridge Co. v. The Southampton Local Board*, 8 *El. & Bl.* 801; 28 *L. J.*, *Q. B.* 41.) And see *Reg. v. Darlington*, *post*, 519.)

See as to general district rates, s. 87, *ante*, 478.

See as to arbitration, ss. 123-128, *ante*, 502-504.

If the board do not deny their liability to make compensation, the proper course is for the plaintiff to take the steps pointed out by sects. 123-128 for the purpose of ascertaining the amount due. But, if all liability is denied, the proper course is to ascertain the liability of the board in the first instance by mandamus; and it is not necessary that the claimant should claim any specific amount. (*Reg. v. Burslem*, 28 *L. J.*, *Q. B.* 345. Affirmed on appeal, 1 *El. & Bl.* 1077; 29 *L. J.*, *Q. B.* 242.) In order to be entitled to compensation under this section the claimant must show actionable damage. (*Hall v. Mayor, etc., of Bristol*, 36 *L. J.*, *C. P.* 110; *Law Rep.* 2 *C. P.* 322.)

Special district rates are now abolished by the 21 & 22 Vict. c. 98, s. 54, *ante*, 484.

Sect. 145, restricting the powers of the board in certain cases, is repealed, and new provisions are substituted by the 21 & 22 Vict. c. 98, s. 68, *post*, 516.

Local board may allow owners time for repayment of expenses.

Sect. 146. In any case in which the local board of health may have incurred expenses for the repayment whereof the owner of the premises for or in respect of which the same are incurred is made liable by this Act, the said local board may, if they think fit, allow such owner time for repayment, and receive the same by such annual instalments, not being less than one-thirtieth part of the entire sum, together with interest at the rate of five pounds in the hundred upon the sum from time to time remaining unpaid, as they, under the circumstances in each case, may consider to be just; but although time for repayment be allowed as last aforesaid, the sum due, or so much thereof as may be unpaid, shall from time to time, in case of default in payment at the times respectively appointed for payment, be recoverable in like manner in all respects as the entire sum might have been recovered if time for repayment had not been allowed.

False evidence punishable as perjury.

Sect. 147. Every person who, upon any examination on oath under the provisions of this Act, shall wilfully and corruptly give false evidence shall be liable to the penalties inflicted upon persons guilty of wilful and corrupt perjury.

Sect. 148. Whosoever wilfully obstructs any superintending inspector, or any member of the local board of health, or any officer or person duly employed in the execution of this Act, or destroys, pulls down, injures, or defaces any board upon which any bye-law, notice, or other matter is inscribed, shall, if the same were put up by authority of the local or general board of health, be liable for every such offence to a penalty not exceeding five pounds; and if the occupier of any premises prevent the owner thereof from obeying or carrying into effect the provisions of this Act, any justice to whom application is made in this behalf shall, by order in writing (which may be according to the form contained in the schedule (F.) to this Act annexed, or to the like effect), require such occupier to permit the execution of the works required to be executed, provided that the same appear to such justice to be such as are necessary for the purpose of obeying or carrying into effect the provisions of this Act; and if within a reasonable time after the making of such order the occupier against whom it is made refuse to comply therewith, he shall be liable to a penalty not exceeding five pounds for every day afterwards during the continuance of such refusal; and if the occupier of any premises, when requested by or on behalf of the local board of health to state the name of the owner of the premises occupied by him, shall refuse or wilfully omit to disclose or wilfully mis-state the same, any justice may, on oath made before him of such request, and refusal, omission, or mis-statement, summon the party to appear before him or some other justice at a time and place to be appointed in such summons, and if after being so summoned he neglect or refuse to attend at the time and place so appointed, or if he do not show good cause for such refusal, or if such wilful omission or mis-statement be proved, the justice before whom the party is so summoned may impose upon the offender a penalty not exceeding five pounds.

Sect. 149. Whenever the consent, sanction, or approval or authority of the general board of health is required by the provisions of this Act, the same shall be in writing under their seal and the hands of two or more members thereof; and whenever the consent, sanction, approval, or authority of the local board of health is so required, the same shall (in the case of a non-corporate district) be in writing under their seal and the hands of five or more of them, or (in case of a corporate district) under their common seal.

A rate not authenticated in the manner pointed out by this section is invalid. (*Reg. v. Workson*, 34 L. J., M. C. 220; 5 B. & S. 951.) But the acts of the board themselves, such as resolutions and notices, need not be so authenticated. (*Barnsley Local Board v. Sedgwick*, *Law Rep.* 2 Q. B. 185; 36 L. J., M. C. 65.)

Sect. 150. Any summons, notice, writ, or proceeding of any kind whatsoever to be served upon the local board of health may be so served by being left at or sent through any post-office, directed to the local board of health at their office, or by being delivered there to the clerk personally; and in all cases in which any notice is by this Act required to be given to the owner or occupier of any premises it shall be sufficient to address the notice to them by the description of the "owner" or "occupier" (as the case may require) of the premises (naming them) in respect of which the notice is given, without further name or description; and the notice shall be served upon them or one of them, as the case may require, either personally or by delivering the same to some inmate of his or their place of abode, or in the case of the occupier (and also in case of the owner, if his place of abode be unknown) upon any inmate of the last-mentioned premises, or if such premises be unoccupied, then, in case the notice is required to be served upon the occupier (and in case of the owner also, if his residence be unknown), it shall be sufficient to fix the notice upon some conspicuous part of the premises: Provided

#### 34. *Miscellaneous.*

Penalty for obstructing officers, defacing boards, etc.;

upon occupiers, preventing execution of works.

Occupiers to disclose owner's name.

Consents of board of health and local board to be in writing.

Service of notice upon local board;

upon owners and occupiers.



34. *Miscellaneous.*

always, in the case of notices to the owner, that, although his place of abode be known to the local board of health, yet, if it be not within the limits of their district, it shall be sufficient for them to transmit any notice, directed to him by name, through the post.

This section is merely in aid of the service of notices ; and therefore a notice under the sixty-ninth section, delivered to the clerk of an owner at his place of business, was held to be sufficient. (*Mason v. Bibby*, 2 *H. & C.* 881 ; 33 *L. J., M. C.* 105.) In that case, *Martin*, B., was of opinion that a place of business is a "place of abode," and a clerk an "inmate," and that the notice was good under this section.

Exemptions  
from stamp duty.

Sect. 151. No advertisement inserted or caused to be inserted by the general or local board of health in the *London Gazette* or any paper or publication under this Act, or for the purpose of carrying the same into effect, nor any deed, award, submission, instrument, contract, agreement, or writing made or executed by the said general or local board, their officers or servants under or for the purposes of this Act, nor any appointment by the general or local board of any officer or person under this Act, shall be chargeable with any stamp duty whatever.

The rest of this section contains an exemption from the duty on windows, now repealed by the 14 & 15 Vict. c. 36.

*Saving Clauses.*

Section 145 of 11 & 12 Vict. c. 63, repealed, and provisions herein named in lieu thereof.

By the 21 & 22 Vict. c. 98, s. 68, the one hundred and forty-fifth section of the "Public Health Act" shall be repealed, and in lieu thereof be it enacted, that nothing in this Act shall be construed to authorize any local board of health,—

1. To use, injure, or interfere with any sluices, floodgates, sewers, groynes, or sea defences, or other works, already or hereafter made under the authority of any commissioners of sewers appointed by the crown, or any sewers or other works already or hereafter made and used for the purpose of draining, preserving, or improving land under any local or private Act of Parliament, or for the purpose of irrigating land, or in any manner to disturb or interfere with any lands, hereditaments, estates, or property vested in her Majesty's principal secretary of state for the war department for the time being, without consent in writing first obtained from such commissioners or secretary of state, or persons acquiring rights under such local or private Acts respectively ; and nothing herein contained shall prejudice or affect the rights, privileges, powers, or authorities given or reserved to any person under such local or private Acts :
2. To interfere with any river, canal, dock, harbour, lock, reservoir, or basin, so as to injuriously affect the navigation thereon, or the use thereof, or to interfere with any towing-path so as to interrupt the traffic thereof, in cases where any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals are by virtue of any Act of Parliament entitled to navigate on or use such river, canal, dock, harbour, lock, reservoir, or basin, or in respect of the navigation on or use of which river, canal, dock, harbour, lock, reservoir, or basin any corporation, company, undertakers, commissioners, conservators, and trustees, or individuals are entitled by virtue of any Act of Parliament to the receipt of any tolls or other dues :
3. To interfere with any watercourse in such manner as to injuriously affect the supply of water to any river, canal, dock, harbour, reservoir, or basin, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals (being authorized by virtue of any Act of Parliament to navigate on or

Saving clause for proprietors of canals, etc.

use such river, canal, dock, harbour, reservoir, or basin, or to demand any tolls or dues in respect of the navigation on or use of such river, canal, dock, harbour, reservoir, or basin) would, if this Act had not passed, have been entitled by law to prevent or be relieved against such interference :

34. *Miscellaneous.*

4. To interfere with any bridges crossing any river, canal, dock, harbour, or basin, in cases where any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are authorized by virtue of any Act of Parliament to navigate or use such river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation or use of such river, canal, dock, harbour, or basin :
5. To execute any works in, through, or under any wharves, quays, docks, harbours, or basins, to the exclusive use of which any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are entitled by virtue of any Act of Parliament, or for the use of which they are entitled by virtue of any Act of Parliament to demand any tolls or dues,

without the consent in every case of such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as are hereinbefore in that behalf respectively mentioned, such consent to be expressed in writing, in the case of a corporation under their common seal, and in the case of a company, undertakers, commissioners, conservators, trustees, or individuals, under the hand of their clerk or other duly authorized officer or agent : Provided always, that nothing in this Act contained shall be construed to alter or affect the maintenance of any rights of local boards existing at the time of the passing of this Act.

It was held under the repealed section that a local board was not justified in polluting the surface water which flowed by an open gutter into a canal, by diverting it into a sewer and passing the sewage into it. (*Manchester, Sheffield, & Lincolnshire Ry. Co. v. Worksop Local Board*, 23 Beav. 198 ; 26 L. J., Ch. 345.) But, where a canal company had statutory power to supply the canal with water out of such "brooks, streams, and watercourses as should be found within a certain distance," the Court felt a difficulty in holding that the mere surface water of a road, not arising from any spring or natural certain supply, could fall within the Act, so far and to such an extent as to exclude a local board from making a system of drainage essential to the district, which, offending against the rights of no one in any other particular, merely allowed to flow through gratings into the sewer the water collected on a public road from rain and from the overflowing of the surplus of the neighbouring houses, which water had theretofore flowed down an open gutter into the canal. (*Ib.*)

Sect. 69. In cases where any matters or things proposed to be done by any local board, and which are not within the prohibition aforesaid, interfere with the improvement of any river, canal, dock, harbour, lock, reservoir, basin, or towing-path which any corporation, company, undertakers, commissioners, conservators, trustees, or individuals are entitled by virtue of any Act of Parliament to navigate on or use, or in respect of the navigation whereon or use whereof to demand any tolls or dues, or interfere with any works belonging to such river, canal, dock, harbour, or basin, or with any land necessary for the enjoyment or improvement thereof, the local board shall give to such corporation, company, undertakers, commissioners, conservators, trustees, or individuals as last aforesaid a notice specifying the particulars of the matters and things so intended to be done ; and if the parties on whom such notice is served do not consent to the requisitions thereof, the matter in difference shall be referred to arbitration ; and the following questions shall be decided by such arbitration ; that is to say,

Works not within preceding section, and which interfere with improvement of rivers, canals, etc., to be referred to arbitration.

34. *Miscellaneous.*

1. Whether the matters or things so proposed to be done by the local board will cause any injury to such river, canal, dock, harbour, basin, towing-path, works, or land as are hereinbefore mentioned in this section, or to the enjoyment or improvement of such river, canal, dock, harbour, or basin as aforesaid :
2. Whether any injury that may be caused by such matters or things or any of them is or not of a nature to admit of being fully compensated by money.

See, as to arbitration, the 11 & 12 Vict. c. 63, ss. 123-128, *ante*, 502-504.

Effect of arbitration.

Sect. 70. The result of any such arbitration shall be final, and the local board shall do as follows ; that is to say,

If the arbitrators are of opinion that no injury will be caused, the local board may forthwith proceed to do the proposed matters and things :

If the arbitrators are of opinion that injury will be caused, but that such injury is of a nature to admit of being fully compensated by money, they shall proceed to assess such compensation ; and upon payment of the amount so assessed, but not before, the local board may proceed to do the proposed matters and things :

If the arbitrators are of opinion that injury will be caused, and that it is not of a nature to admit of being fully compensated by money, the local board shall not proceed to do any matter or thing in respect of which such opinion may be given.

Provision as to transfer of powers, etc.

Sect. 71. No transfer of powers and privileges under this Act shall deprive any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorized by virtue of any Act of Parliament to navigate on any river or canal, or to demand for their own benefit in respect of such navigation any tolls or dues, of such powers and privileges as are vested in them by any Act of Parliament in relation to such river or canal.

Power for Corporation to alter Sewers.

Sect. 72. Any corporation, company, undertakers, commissioners, conservators, trustees, or individuals authorized by virtue of any Act of Parliament to navigate on or use any river, canal, dock, harbour, or basin, or to demand any tolls or dues in respect of the navigation on such river or canal or the use of such dock, harbour, or basin, may, at their own expense, and on substituting other sewers, drains, culverts, and pipes equally effectual, and certified as such by the surveyor to the local board, take up, divert, or alter the level of any sewers, drains, culverts, or pipes constructed by any local board, and passing under or interfering with such rivers, canals, docks, harbours, or basins, or the towing-paths of such rivers, canals, docks, harbours, or basins, and do all such matters and things as may be necessary for carrying into effect such taking up, diversion, or alteration.

Preserving Water Rights of Companies or Individuals.

Sect. 73. Nothing in this Act or any Act incorporated therewith shall be construed to authorize any local board to injuriously affect any reservoir, river, or stream, or the feeders of any reservoir, river, or stream, or the supply, quality, or fall of water contained in any reservoir, river, stream, or feeders of any reservoir, river, or stream, in cases where any company or individuals would, if this Act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir, river, stream, feeders, supply, quality, or fall of water, unless such board shall have first obtained the consent in writing of such company or individuals so entitled as aforesaid.

Persons having a right to a watering-place in a river adjoining lands for the use of their cattle are interested in the river, and works of a board of health producing an outfall of the sewage above such a water-

ing-place amount to such an interference with that interest as will be prevented by injunction by a Court of equity if not consented to. (*Oldaker v. Hunt*, 6 *De G. Mac. & G.* 376.)

A person who owns the lands on either side of the stream may support an information in equity against the board for fouling the water on that ground as well as on that of the nuisance to the public; and the fact that long previous and up to the constitution of the local board a few houses in the town drained into the stream will afford no grounds for setting up a prescriptive right on behalf of the board, since the board as a modern corporation can claim no prescriptive rights. (*Attorney-General v. Luton Local Board of Health*, 2 *Jur.*, *N. S.*, 180.)

Where by direction of a local board the sewage of a town had been drained into a river, and not having been sufficiently deodorized before coming into contact with the river, had so polluted the stream as to kill the fish therein and otherwise cause a nuisance, an injunction was granted at the instance of a riparian proprietor restraining the further pollution of the water. (*Bidder v. Croydon Local Board*, 6 *L. T.*, *N. S.* 778.)

The remedy at common law against a local board for an injurious affecting within this section is by action, and not by mandamus to compel them to summon a jury to assess compensation under the 11 & 12 *Vict. c. 63*, s. 144.) (*Reg. v. Durlington Local Board*, 5 *B. & S.* 515; 33 *L. J.*, *Q. B.* 305; affirmed on appeal, 35 *L. J.*, *Q. B.* 45; 6 *B. & S.* 562.)

If the local board disobey an injunction restraining them from causing or permitting sewage or water polluted therewith to pass into a river, sequestration will be ordered to issue. (*Spokes v. Banbury Local Board*, *Law Rep.*, 1 *Eq.* 42; 35 *L. J.*, *Ch.* 105.)

Sect. 74. Any difference of opinion that may arise between a local board and any such corporation, company, commissioners, conservators, trustees, or individuals as aforesaid, whether any sewers, drains, culverts, or pipes substituted under the powers of this Act for sewers, drains, culverts, or pipes constructed or laid down by any local board are equally effectual with those for which they are substituted, or whether the supply, quality, or fall of water in any such reservoir, river, or stream as last aforesaid is injuriously affected by the exercise of powers under this Act, may, at the option of the party complaining, be determined by arbitration in the manner hereinbefore provided; and in the latter case the arbitrators shall decide the same questions as to the alleged injury; and the local board shall proceed in the same way as is hereinbefore provided with regard to arbitrations in cases of alleged injury to rivers, canals, docks, harbours, and basins.

See sect. 69, *ante*, 517.

#### *Oxford and Cambridge.*

Sect. 82. Notwithstanding anything contained in this Act, the Oxford and Cambridge Commissioners, described in the thirty-first section of the "Public Health Act, 1848," shall be the bodies authorized to adopt this Act for the districts respectively within their jurisdiction; and in the event of the adoption of this Act by the said Cambridge commissioners, the said commissioners shall be the local board for the district of Cambridge; and in the event of such adoption by the said Oxford commissioners, the local board of the Oxford district shall consist of the Vice-Chancellor of the University of Oxford and the Mayor of Oxford for the time being, and of forty-five other commissioners, fifteen to be elected by the university of Oxford, sixteen by the town council of Oxford, and fourteen by the ratepayers of the parishes situate within the jurisdiction of the Oxford commissioners; and the election of such commissioners by the town council and by the ratepayers of the parishes respectively shall be conducted at the same time, in the same way, and subject to the same

## II. *The Sewage Utilization Acts.*

regulations in and subject to which members constituting the body of Oxford commissioners are now respectively chosen by such town council and parishes; and the fifteen commissioners to be elected by the university shall be elected as follows; namely, four commissioners shall be elected by the university in convocation, and eleven commissioners shall be elected by the heads and senior bursars of the several colleges, and by the heads of the several halls; and the elections shall be conducted by the said university, and by the colleges and halls respectively, at the same time and in the same way, and subject to the same regulations, in and subject to which guardians of the poor for the university and for the colleges and halls are now chosen by them respectively, save that in the election of commissioners the heads and bursars of all the colleges and the heads of all the halls shall be summoned by the vice-chancellor for that purpose, and shall be entitled to vote; and differences between either of the universities of Oxford and Cambridge and the local boards of Oxford and Cambridge respectively within the meaning of the one hundred and fifth section of the "Public Health Act, 1848," shall be settled by arbitration in the manner provided by that Act.

See the 11 & 12 Vict. c. 63, s. 31, *ante*, 441, and the 105th sect., *ante*, 484. As to arbitration, see sects. 123-128, *ante*, 502-504.

Application of  
General Acts to  
Local Boards of  
Health.

By the 24 & 25 Vict. c. 61, s. 29, reciting that doubts exist whether local boards of health, constituted under or by virtue of local acts, are affected by the provisions of the "Local Government Act, 1858," or by the provisions of the "Nuisances Removal Act for England, 1855," and the "Diseases Prevention Act, 1855," and it is desirable to remove such doubts: it is enacted, that all the provisions of the "Local Government Act, 1858," as amended by this Act, and of the "Nuisances Removal Act for England, 1855," and the "Diseases Prevention Act, 1855," as amended by the "Act to amend the Acts for the removal of nuisances and prevention of diseases," which Acts are hereinafter designated the general Acts, shall extend and apply to all local boards of health constituted under or by virtue of local Acts, with and subject to the two following qualifications; that is to say,

1. Provisions of the general Acts opposed to or restrictive of the provisions (whether adopted or original) of any such local Act shall be of no force in the district for which the local Act was passed:
2. Wherever the general Acts and a local Act contain provisions for effecting the same or a similar object, but in different modes, the local board of health may proceed under the general Acts or the local Act:

And every future Act for amending or repealing any of the general Acts aforesaid shall, subject to the aforesaid qualifications, also extend and apply to every such local board of health.

## II. *The Sewage Utilization Acts.*

These Acts, which were passed for the purpose of removing difficulties under which local boards and other bodies having the care of sewers laboured in disposing of the sewage of their districts, and of giving facilities for such authorities to make arrangements for the application of such sewage to land for agricultural purposes, comprise the "Sewage Utilization Act, 1865" (28 & 29 Vict. c. 75), the "Sanitary Act, 1866" (29 & 30 Vict. c. 90), the "Sewage Utilization Act, 1867" (30 & 31 Vict. c. 113), and the "Sanitary Act, 1868" (31 & 32 Vict. c. 115). The subject of them may be divided under the following heads:—

1. *Application of the Acts and Interpretation of Terms*, p. 521.  
(28 & 29 Vict. c. 75, ss. 2, 3, 13; 29 & 30 Vict. c. 90, ss. 2, 3, 55;  
30 & 31 Vict. c. 113, ss. 2, 16, 19; 31 & 32 Vict. c. 115, ss. 2,  
3, 11.)
2. *Power to form Committees*, p. 523.  
(29 & 30 Vict. c. 90, s. 4.)
3. *Special Drainage District*, p. 524.  
(29 & 30 Vict. c. 90, ss. 5-7; 30 & 31 Vict. c. 113, ss. 6-9.)
4. *Union of Districts*, p. 525.  
(30 & 31 Vict. c. 113, ss. 10-14.)
5. *Power to Construct Sewers*, p. 526.  
(28 & 29 Vict. c. 75, ss. 4, 5.)
6. *Use of Sewers*, p. 527.  
(29 & 30 Vict. c. 90, ss. 8, 9.)
7. *Drainage of Houses*, p. 527.  
(29 & 30 Vict. c. 90, s. 10; 31 & 32 Vict. c. 115, ss. 4, 5, 7.)
8. *Supply of Water*, p. 529.  
(29 & 30 Vict. c. 90, ss. 11-13.)
9. *Payment of Expenses*, p. 530.  
(28 & 29 Vict. c. 75, s. 6; 30 & 31 Vict. c. 113, ss. 17, 18; 31 & 32  
Vict. c. 115, s. 6.)
10. *Power to take Land*, p. 531.  
(28 & 29 Vict. c. 75, s. 7.)
11. *Compensation*, p. 531.  
(28 & 29 Vict. c. 75, s. 8.)
12. *Power to Combine*, p. 531.  
(28 & 29 Vict. c. 75, s. 9.)
13. *Pollution of Streams*, p. 531.  
(28 & 29 Vict. c. 75, ss. 10, 11.)
14. *Loans*, p. 532.  
(28 & 29 Vict. c. 75, s. 12.)
15. *Disposal of Sewage*, p. 532.  
(28 & 29 Vict. c. 75, ss. 14, 15; 30 & 31 Vict. c. 113, ss. 3-5, 15.)
16. *Hospitals*, p. 533.  
(28 & 29 Vict. c. 90, s. 37; 31 & 32 Vict. c. 115, s. 10.)
17. *Legal Proceedings*, p. 533.  
(29 & 30 Vict. c. 90, ss. 45, 46, 48-50, 54; 31 & 32 Vict. c. 115,  
ss. 8, 9.)

1. *Applica-  
tion of Acts,  
etc.*

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#### 1. APPLICATION OF ACTS AND INTERPRETATION OF TERMS.

By the 28 & 29 Vict. c. 75, s. 2, this Act shall not extend to any part of the metropolis as defined by the 18 & 19 Vict. c. 120, for better local management of the metropolis, [and shall not, with the exception of

Application of  
Act.

1. *Application of Acts, etc.*

clause fifteen, extend to any parish as defined in the schedule to this Act in a part of which parish the "Public Health Act, 1848," and the "Local Government Act, 1858," or one of such Acts, is in force at the time of the passing of this Act].

The part within brackets is repealed by the 30 & 31 Vict. c. 113, s. 6, *post*, 525.

Definition of "sewer authority."

3. The expression "sewer authority" shall, in the several places in the schedule annexed thereto in that behalf mentioned, mean the persons or bodies of persons referred to in the first column of the schedule annexed hereto; and the term "district," in relation to a sewer authority, shall, as respects each authority, mean the place in that behalf referred to in the second column of the said schedule.

"Local board" shall mean a local board authorized in pursuance of the "Public Health Act, 1848," and "The Local Government Act, 1858," or one of such Acts.

The following is the schedule referred to:—

Description of Local Authority.	Description of Places.	Rate or fund out of which expenses to be paid.
The mayor, alderman, and burgesses acting by the council.	In boroughs, with the exception of the boroughs of Oxford and Cambridge, not within the jurisdiction of a local board.	The borough fund or borough rate.
The commissioners, trustees, or other persons intrusted by any local Act of Parliament with powers of improving, cleansing, lighting, or paving the town.	The boroughs of Oxford and Cambridge, and any town or place not included within the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons intrusted by any local Act with powers of improving, cleansing, lighting, or paving any town.	Any rate leviable by the commissioners, trustees, or other persons.
The vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry.	In parishes not within the jurisdiction of any sewer authority hereinbefore mentioned, and in which a rate is levied for the maintenance of the poor.	The poor rate.

By the 30 & 31 Vict. c. 113, s. 16, "parish" in this schedule is to include any township or other place in which a separate rate is levied for the relief of the poor.

Powers of Act cumulative.

Sect. 13. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any sewer authority by Act of Parliament, law, or custom; and the sewer authority may exercise such other powers in the same manner as if this Act had not passed.

Definition of "sewer authority."

By the 29 & 30 Vict. c. 90, s. 2, "sewer authority" in this Act shall have the same meaning as it has in the "Sewage Utilization Act, 1865," *supra*.

The rest of the section relates to Ireland only.

As to the meaning of the word "owner" in this Act, see the 31 & 32 Vict. c. 115, s. 11, *post*, 523.

By the 29 & 30 Vict. c. 90, s. 3, this part of this Act shall be construed as one with the "Sewage Utilization Act, 1865," and the expression "The Sewage Utilization Act, 1865," as used in this or any other Act of Parliament or other document, shall mean the said "Sewage Utilization Act, 1865," as amended by this Act.

This part comprises all the sections from the second to the thirteenth inclusive.

Sect. 55. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any local authority by Act of Parliament, law, or custom, and such authority may exercise such other powers in the same manner as if this Act had not been passed.

By the 30 & 31 Vict. c. 113, s. 2, the expression "sewer authority" shall in this Act have the same meaning as in the "Sewage Utilization Act, 1865," and in addition shall include a local board, and shall in this Act and the said "Sewage Utilization Act, 1865," include any collegiate or other corporate body required or authorized by or in pursuance of any Act of Parliament to divert its sewers or drains from any river or to construct new sewers, and any public department of the Government; and any person appointed by the secretary of state in pursuance of the forty-ninth section of the "Sanitary Act, 1866" (a), to perform the duty of a sewer authority or local board that has been guilty of a default as therein mentioned, shall, in the performance of such duty and for the purposes thereof, be invested with all the powers of the sewer authority or local board in default, except the power of levying rates.

Sect. 19. All powers given by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred on any authority by Act of Parliament, law, or custom, and such other powers may be exercised in the same manner as if this Act had not passed.

By the 31 & 32 Vict. c. 115, s. 2, this Act shall not extend to Scotland or Ireland.

Sect. 3. "Sewer authority" in this Act shall have the same meaning as it has in the "Sewage Utilization Act, 1865."

By sect. 7, local authority shall for the purposes of this Act mean any local board and any sewer authority.

Sect. 11. In the construction of the first part of the "Sanitary Act, 1866," "owner" shall have the same meaning as it has in the second part of the said Act; and notices may be served for the purposes of the first part of the said Act in the same manner in which they are required to be served under the second part of the said Act.

The first part of the "Sanitary Act, 1866," comprises all the sections from the second to the thirteenth inclusive.

## 2. POWER TO FORM COMMITTEES.

By the 29 & 30 Vict. c. 90, s. 4, any sewer authority may from time to time, at any meeting specially convened for the purpose, form one or more committee or committees consisting wholly of its own members, or partly of its own members and partly of such other persons contributing to the rate or fund out of which the expenses incurred by such authority are paid, and qualified in such other manner as the sewer authority may determine, and may delegate, with or without conditions or restrictions, to any committee so formed, all or any powers of such sewer authority, and may from time to time revoke, add to, or alter any powers so given to a committee.

## 2. Power to Form Committees.

This part to be construed with 28 & 29 Vict. c. 75.

Powers of Act cumulative.

Definition of "sewer authority."

Powers of Act to be in addition and not in derogation of other powers.

Application of Act.

Definition of "sewer authority."

Construction of first part of the "Sanitary Act, 1866."

Power to sewer authority to form committee of its own members and others.



### 3. *Special Drainage Districts.*

A committee may elect a chairman of its meetings. If no chairman is elected, or if the chairman elected is not present at the time appointed for holding the same, the members present shall choose one of their number to be chairman of such meeting. A committee may meet and adjourn as it thinks proper. The quorum of a committee shall consist of such number of members as may be prescribed by the sewer authority that appointed it, or, if no number be prescribed, of three members. Every question at a meeting shall be determined by a majority of votes of the members present, and voting on that question; and in case of an equal division of votes the chairman shall have a second or casting vote.

The proceedings of a committee shall not be invalidated by any vacancy or vacancies amongst its members.

A sewer authority may from time to time add to or diminish the number of the members or otherwise alter the constitution of any committee formed by it, or dissolve any committee.

A committee of the sewer authority shall be deemed to be the agents of that authority, and the appointment of such committee shall not relieve the sewer authority from any obligation imposed on it by Act of Parliament or otherwise.

### 3. SPECIAL DRAINAGE DISTRICTS.

#### Formation of special drainage district.

By the 29 & 30 Vict. c. 90, s. 5, where the sewer authority of a district is a vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise as or instead of a vestry or select vestry, it may, by resolution at any meeting convened for the purpose after twenty-one clear days' notice affixed to the places where parochial notices are usually affixed in its district, form any part of such district into a special drainage district for the purposes of the "Sewage Utilization Act," and thereupon such special drainage district shall, for the purposes of the "Sewage Utilization Act, 1865," and the powers therein conferred, be deemed to be a parish in which a rate is levied for the maintenance of the poor, and of which a vestry is the sewer authority, subject, as respects any meeting of the inhabitants thereof in vestry, to the Act of the fifty-eighth year of the reign of King George the Third, chapter sixty-nine, and the Acts amending the same; and any officer or officers who may from time to time be appointed by the sewer authority of such special drainage district for the purpose shall have within that district all the powers of levying a rate for the purpose of defraying the expense of carrying the said "Sewage Utilization Act" into effect that they would have if such district were such parish as aforesaid, and such rate were a rate for the relief of the poor, and they were duly appointed overseers of such parish.

#### Appeal against Constitution of Special Drainage District.

Sect. 6. Where the sewer authority of any place has formed a special drainage district in pursuance of this Act, if any number of the inhabitants of such place, not being less than twenty, feel aggrieved by the formation of such district, or desire any modification in its boundaries, they may, by petition in writing under their hands, bring their case under the consideration of one of her Majesty's principal secretaries of state, and the said secretary of state may, after due investigation, annul the formation of the special drainage district or modify its boundaries as he thinks just.

By the 30 & 31 Vict. c. 113, s. 9, *post*, 525, the petition must be presented within three months.

#### Evidence of Formation of Special Drainage District.

Sect. 7. A copy of the resolution of a sewer authority forming a special drainage district shall be published by affixing a notice thereof to the church door of the parish in which the district is situate, or of the adjoining parish if there be no church in the said parish, and by advertising notice thereof in some newspaper published or circulating in the county in which such district is situate; and the production of a news-

paper containing such advertisement, or a certificate under the hand of the clerk or other officer performing the duties of clerk for the time being of the sewer authority which passed the resolution forming the district, shall be evidence of the formation of such district, and after the expiration of three months from the date of the resolution forming the district, such district shall be presumed to have been duly formed, and no objection to the formation thereof shall be entertained in any legal proceedings whatsoever.

By the 30 & 31 Vict. c. 113, s. 6, there shall be repealed so much of the second section of the "Sewage Utilization Act, 1865" (*a*), as provides that "this Act shall not, with the exception of clause fifteen, extend to any parish as defined in the schedule to this Act, in a part of which parish the 'Public Health Act, 1848,' and the 'Local Government Act, 1858,' or one of such Acts, is in force at the time of the passing of this Act."

Sect. 7. Where part of a parish as defined in the schedule to the "Sewage Utilization Act, 1865" (*b*), as amended by this Act, is at the time of the passing of this Act subject to the jurisdiction of a local board in pursuance of the "Local Government Act, 1858," the portion of such parish which is not subject to the jurisdiction of any local board shall for the purposes of the "Sewage Utilization Act, 1865," and of this Act, be deemed to be by this Act constituted a special drainage district, unless the secretary of state, upon petition presented to him in manner provided by the sixth section of the "Sanitary Act, 1866" (*c*), within three months after the passing of this Act, otherwise directs.

It shall not be necessary in the case of part of a parish which is by this section constituted a special drainage district, to give the notices required by section seven of the "Sanitary Act, 1866" (*d*).

Sect. 8. Any inhabited place not having a known or defined boundary may petition one of her Majesty's principal secretaries of state in manner provided in the sixteenth section of the "Local Government Act, 1858" (*e*), to settle its boundaries for the purposes of the "Sewage Utilization Act, 1865," and of this Act, and the secretary of state may, by order made in manner provided by the said section, settle the same accordingly, and from and after the date of such order the place shall be deemed to have been constituted a special drainage district for the purposes of the said "Sewage Utilization Act, 1865," and of this Act.

A copy of the order of the secretary of state shall be published in manner provided by the seventh section of the "Sanitary Act, 1866" (*f*), and that section shall be construed in reference to a special drainage district formed under this section as if the order of the said secretary of state were substituted for "resolution of a sewer authority."

Sect. 9. No petition of appeal shall be presented to the secretary of state in pursuance of the sixth section of the "Sanitary Act, 1866" (*g*), except within three months after the date of the resolution forming the district, and the said section shall be read as if after the words "petition in writing under the hands" there were inserted the words "presented within three months after the date of the resolution forming the district."

#### 4. Union of Districts.

Repeal of Part of Sect. 2 of 28 & 29 Vict. c. 75, excluding from Act Parish partly under Local Government Act.

Where Part of Parish is at Time of passing of this Act under 21 & 22 Vict. c. 98, the other Part constituted a Special Drainage District.

Power of undefined Inhabited Place to apply to be constituted a Special Drainage District.

Time for Appeal against special drainage district.

#### 4. UNION OF DISTRICTS.

By the 30 & 31 Vict. c. 113, s. 10, where it appears to the sewer authority (*h*) of any district that it would be for the advantage of such

Constitution of joint sewerage district.

(*a*) *Ante*, 521.

(*b*) *Ante*, 522.

(*c*) *Ante*, 524.

(*d*) *Ante*, 524.

(*e*) *Ante*, 430.

(*f*) *Ante*, 524.

(*g*) *Ante*, 524.

(*h*) By the 30 & 31 Vict. c. 113, s. 2, *ante*, 523, the words "sewer authority" in this section include local boards.

*5. Power to  
to Construct  
Sewers, etc.*

district, and of any district or districts adjoining or lying within the same drainage area, or otherwise conveniently situate, that all such districts should be formed into a united district for the purposes of the "Sewage Utilization Act, 1865," and of this Act, or for any of such purposes, such sewer authority may, with the consent of the sewer authority of every district affected, apply to one of her Majesty's principal secretaries of state for an order forming such districts into one district, hereinafter referred to as a united district, and the secretary of state, if satisfied of the expediency of such union of districts, may make an order accordingly.

Advertisement  
of intention to  
form united dis-  
trict.

Sect. 11. The intention of a sewer authority (*a*) to apply to one of her Majesty's principal secretaries of state for an order forming a united district shall be advertised in some newspaper circulating within the area of such proposed united district once at least in each of the three weeks before such application is made.

Constitution of  
joint sewerage  
board.

Sect. 12. A united district shall be subject to the jurisdiction of a joint sewerage board consisting of members elected by each of the sewer authorities of the component districts in such manner as may be determined by the said secretary of state, and such board shall be a body corporate, with perpetual succession and a common seal, having a capacity to acquire and hold lands for all the purposes of the "Sewage Utilization Act, 1865," and of this Act, or for any of such purposes.

The first meeting of a joint sewerage board shall be held in such manner and at such time as may be determined by the said secretary of state, and "the rules as to proceedings of drainage boards" contained in the second part of the schedule annexed to the "Land Drainage Act, 1861," shall apply to a joint sewerage board constituted under this Act.

Powers of joint  
sewerage board.

Sect. 13. A joint sewerage board shall, in the united district, have all the same powers, except the power of levying a rate, and be subject to the same obligations, so far as relate to the purposes of its constitution, as if it were the only sewer authority of that district, subject to this proviso, that the said joint board may delegate to any sewer authority of a component district such powers of superintendence or otherwise within its own district as such joint board think fit.

Expenses of joint  
sewerage board  
how defrayed.

Sect. 14. Any expenses incurred by a joint sewerage board in pursuance of this Act shall be defrayed out of a common fund to be contributed by the component districts in proportion to the rateable value of each district, or in such other proportion as the said secretary of state may, with the consent of the sewer authority of each component district, order and determine.

The rateable value of a district shall be deemed to be the value on which any such rate would be assessed as would, if such district were not in union, be applicable by the sewer authority of that district to the payment of any expenses legally incurred by that authority, and the amount of contribution shall be paid out of such last-mentioned rate, and the sewer authority of each component district shall levy the same accordingly.

## 5. POWER TO CONSTRUCT SEWERS, ETC.

Powers of sewer  
authorities.

By the 28 & 29 Vict. c. 75, s. 4, sewer authorities shall have power to construct such sewers as they may think necessary for keeping their district properly cleansed and drained, and shall, as respects all sewers constructed by them or under their control, whether the same were made before or after the passing of this Act, have all the powers that local boards have, in respect of sewers vested in or constructed by them,

(a) See note (*h*), *ante*, 525.

under the forty-fifth and forty-sixth sections of the "Public Health Act, 1848" (*a*), the thirtieth section of the "Local Government Act, 1858" (*b*), and the fourth section of the "Local Government Act, 1858, Amendment Act, 1861" (*c*), subject to the provisions of the fifth and sixth sections of the last-mentioned Act (*d*), and to the saving clauses in the "Local Government Act, 1858," mentioned, from sixty-eight to seventy-four (*e*), both inclusive; and in Scotland, in addition to such of the aforesaid powers as are applicable to Scotland, all the powers contained in section seven (public sewers) of part four of the "General Police and Improvement (Scotland) Act, 1862."

### 7. Drainage of Houses.

Sect. 5. The sewer authority shall have the powers of entry conferred by the one hundred and forty-third section of the "Public Health Act, 1848" (*f*), for the purposes of making or keeping in repair any works made or to be made by them, as well as for the purposes specified in the said section.

Power of entry.

The purposes specified are to make plans, survey, measure and take levels, examine works, ascertain the course of sewers or drains, and ascertain or fix boundaries.

### 6. USE OF SEWERS.

By the 29 & 30 Vict. c. 90, s. 8, any owner or occupier of premises within the district of a sewer authority shall be entitled to cause his drains to empty into the sewers of that authority on condition of his giving such notice as may be required by that authority of his intention so to do, and of complying with the regulations of that authority in respect of the mode in which the communications between such drains and sewers are to be made, and subject to the control of any person who may be appointed by the sewer authority to superintend the making of such communications; but any person causing any drain to empty into any sewer of a sewer authority without complying with the provisions of this section shall incur a penalty not exceeding twenty pounds, and it shall be lawful for the sewer authority to close any communication between a drain and sewer made in contravention of this section, and to recover in a summary manner from the person so offending any expenses incurred by them under this section.

Power to drain into sewers of sewer authority.

Sect. 9. Any owner or occupier of premises beyond the limits of the district of a sewer authority may cause any sewer or drain from such premises to communicate with any sewer of the sewer authority upon such terms and conditions as may be agreed upon between such owner or occupier and such sewer authority, or in case of dispute may, at the option of the owner or occupier, be settled by two justices or by arbitration in manner provided by the "Public Health Act, 1848," in respect of matters by that Act authorized or directed to be settled by arbitration.

Use of sewers by persons beyond district.

### 7. DRAINAGE OF HOUSES.

By the 29 & 30 Vict. c. 90, s. 10, if a dwelling-house within the district of a sewer authority is without a drain or without such drain as is sufficient for effectual drainage, the sewer authority may by notice require the owner of such house within a reasonable time therein specified to make a sufficient drain emptying into any sewer which the sewer authority is entitled to use, and with which the owner is entitled to make a communication, so that such sewer be not more than one hundred feet from the site of the house of such owner; but if no such means of drainage are within that distance then emptying into such covered cess-

As to the drainage of houses.

(*a*) *Ante*, 446, 447.  
(*b*) *Ante*, 448.  
(*c*) *Ante*, 448.

(*d*) *Ante*, 449.  
(*e*) *Ante*, 516.  
(*f*) *Ante*, 513.

### 7. *Drainage of Houses.*

Power to sewer authority in relation to privies.

pool or other place not being under any house, as the sewer authority directs; and if the person on whom such notice is served fails to comply with the same, the sewer authority may itself, at the expiration of the time specified in the notice, do the work required, and the expenses incurred by it in so doing may be recovered from such owner in a summary manner.

By the 31 & 32 Vict. c. 115, s. 4, the following sections of the "Public Health Act, 1848," as amended by any subsequent Act of Parliament, that is to say,—

1. The fifty-first section (*a*), requiring every new house and every house pulled down to or below the ground floor and rebuilt to have a sufficient watercloset or privy and ashpit;
2. And the fifty-fourth section (*b*) as amended by any subsequent Act of Parliament, providing that the local board of health shall see that drains, waterclosets, privies, and ashpits within their district do not become a nuisance;

shall extend to the district of every sewer authority in which there is no enactment of any public or private Act of Parliament to the like effect in force; and the said sections when so extended shall be construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "local board," and any officer for the time being appointed by the sewer authority to examine any premises shall be deemed to be the surveyor within the meaning of the said sections.

Where the sewer authority and the nuisance authority of a district are different bodies of men, the jurisdiction of the nuisance authority shall cease within such district in relation to all matters within the purview of the said sections of the "Public Health Act, 1848;" and any sewer authority to whose district the said sections are extended making default in enforcing their provisions shall be subject to proceedings under the "Sanitary Act, 1866," in the same manner as if it had made default in providing its district with sufficient sewers.

Power of sewer authorities as to sewerage.

Sect. 5. A sewer authority shall within their district have all the powers vested in a local board by the thirty-second section of the "Local Government Act, 1858" (*c*), as amended by any subsequent Act of Parliament, so far as relates to—

1. The removal of house refuse from premises;
2. The cleansing of privies, ashpits, and cesspools;

and the paragraphs numbered 1, 2, and 3 of the said section shall be construed in reference to the district of any sewer authority as if the expression "sewer authority" were inserted therein in the place of the expression "local board."

Where the sewer authority and the nuisance authority are different bodies of men, the jurisdiction of the nuisance authority in such district shall cease in respect to all matters over which the sewer authority acquires powers by this section.

Earth-closets may in certain cases be constructed instead of water-closets.

Sect. 7. Any enactment of any Act of Parliament in force in any place requiring the construction of a watercloset shall, with the approval of the local authority, be satisfied by the construction of an earth-closet, or other place for the reception and deodorization of fecal matter, made and used in accordance with any regulation from time to time issued by the local authority.

The local authority may as respects any houses in which such earth-closets or other places as aforesaid are in use with their approval, dis-

pense with the supply of water required by any contract or enactment to be furnished to the waterclosets in such houses, on such terms as may be agreed upon between such authority and the persons or body of persons providing or required to provide such supply of water.

The local authority may themselves undertake or contract with any person to undertake a supply of dry earth or other deodorizing substance to any house or houses within their district for the purpose of any earth-closets or other places as aforesaid.

The local authority may themselves construct or require to be constructed earth-closets or other such places as aforesaid in all cases where, under any enactment in force, they might construct waterclosets or privies, or require the same to be constructed, with this restriction, that no person shall be required to construct an earth-closet or other place as aforesaid in any house instead of a watercloset if he prefer to comply with the provisions of the enactment in force requiring the construction of a watercloset, and a supply of water for other purposes is furnished to such house, and that no person shall be put to greater expense in constructing an earth-closet or other place as aforesaid than he would be put to by compliance with the provisions of any enactment as to water-closets or privy accommodation which he might have been compelled to comply with if this section had not been passed.

Local authority shall, for the purposes of this Act, mean any local board and any sewer authority.

### 8. SUPPLY OF WATER.

By the 29 & 30 Vict. c. 99, s. 11, a sewer authority within its district shall have the same powers in relation to the supply of water that a local board has within its district, and the provisions of the sections hereinafter mentioned shall apply accordingly in the same manner as if in such provisions "sewer authority" were substituted for "local board of health" or "local board," and the district in such provisions mentioned were the district of the sewer authority and not the district of the local board; that is to say, the sections numbered from seventy-five to eighty, both inclusive, of the "Public Health Act, 1848" (a); sections fifty-one, fifty-two, and fifty-three of the "Local Government Act, 1858" (b); and section twenty of the "Local Government Act 1858 Amendment Act, 1861" (c).

Supply of water to district of sewer authority.

The sewer authority may, if it think it expedient so to do, provide a supply of water for the use of the inhabitants of the district by—

1. Digging wells;
2. Making and maintaining reservoirs;
3. Doing any other necessary acts;

and they may themselves furnish the same, or contract with any other person or companies to furnish the same: provided always that no land be purchased or taken under this clause except by agreement or in manner provided by the "Local Government Act, 1858."

As to taking land, see the 21 & 22 Vict. c. 98, s. 75, *ante*, 475.

SECT. 12. Any expenses incurred by a sewer authority in or about the supply of water to its district, and in carrying into effect the provisions hereinbefore in that behalf mentioned, shall be deemed to be expenses incurred by that authority in carrying into effect the "Sewage Utilization Act, 1865," and be payable accordingly.

Expenses of sewer authority in supplying water.

See, as to the payment of expenses, the 28 & 29 Vict. c. 75, s. 6, *post*, 530; and, as to the mode of recovering the expenses of supplying premises, see the 29 & 30 Vict. c. 90, s. 50, *post*, 534.

(a) *Ante*, 468-470.

(b) *Ante*, 471.

(c) *Ante*, 472.

### 9. *Payment of Expenses.*

Wells, etc., belonging to any place vested in sewer authority, etc., 23 & 24 Vict. c. 77, s. 7.

Payment of expenses.

Sect. 13. All property in wells, fountains and pumps, and powers in relation thereto, vested in the nuisance authority by the seventh section of the 23 & 24 Vict. c. 77, shall vest in the sewer authority, where the sewer authority supplies water to its district.

See the 23 & 24 Vict. c. 77, *post*, tit. "*Nuisance*."

### 9. PAYMENT OF EXPENSES.

By the 28 & 29 Vict. c. 75, s. 6, a sewer authority shall pay all expenses incurred by them in carrying this Act into effect out of the fund or rate in the schedule in that behalf mentioned, and shall have all such powers of borrowing money on the security of such fund or rate as local boards have of borrowing money under the "*Local Government Act, 1858*," and the Acts amending that Act, on the security of the funds or rates in the said Acts in that behalf mentioned, subject to the conditions and sanction under which such powers are exercised by local boards under the said Acts.

As to the powers of borrowing money, see the 21 & 22 Vict. c. 98, ss. 10, 57-59, 78, *ante*, 489-491, and the 24 & 25 Vict. c. 61, s. 19, *ante*, 491.

See the schedule, *ante*, 522.

In parishes a separate rate to be levied for sewage purposes.

By the 30 & 31 Vict. c. 113, s. 17, where the sewer authority of a district is a vestry, select vestry, or other body of persons acting by virtue of any Act of Parliament, prescription, custom, or otherwise, as or instead of a vestry or select vestry, such authority shall for the purpose of defraying any expenses incurred in carrying into effect the "*Sewage Utilization Act, 1865*," or this Act, issue their precept to the overseers of the parish of which they are the authority, requiring such overseers to pay over the amount specified in such precept to the sewer authority, or to their officer named in the precept, or into some bank mentioned in such precept.

The overseers shall comply with the requisitions of such precept by levying a separate rate in the same manner as if it were a rate for the relief of the poor, with this exception, that the owner of any tithes or of any tithe commutation rentcharge, or the occupier of any land used as arable, meadow, or pasture ground only, or as woodlands, market gardens, or nursery grounds, and the occupier of any land covered with water, or used only as a canal or towing-path for the same, or as a railway constructed under the powers of any Act of Parliament for public conveyance, shall, where a special assessment is made for the purpose of such rate, be assessed in respect of such property in the proportion of one-fourth part only of the rateable value thereof; or, where no special assessment is made, shall pay in respect of the said property one-fourth part only of the rate in the pound payable in respect of houses and other property.

A separate rate under this Act shall, as respects the powers of the overseers in relation to making, assessing, and levying such rate, and as respects the appeal against the same, and all other incidents thereof except the purposes to which it is applicable, be deemed to be a rate levied for the relief of the poor.

The expression "*overseers*" shall include any officer authorized to levy a rate in a special drainage district, and any person or body of persons authorized or required to levy rates for the relief of the poor.

Penalty on non-payment of rates by overseers.

Sect. 18. In case the amount ordered by any precept of a sewer authority to be paid by the overseers of any parish be not paid in manner directed by such precept and within the time therein specified for that purpose, it shall be lawful for any justice of the peace, upon the complaint by the sewer authority or by any person authorized by the sewer authority, to issue his warrant for levying the amount or so much thereof as may be in arrear by distress and sale of the goods of all or any of the said overseers; and in case the goods of all the overseers be not suf-

ficient to pay the same, the arrears thereof shall be added to the amount of the next levy which is directed to be made in such parish for the purposes of the "Sewage Utilization Act, 1865," or this Act, and shall be collected by the like methods.

By the 31 & 32 Vict. c. 115, s. 6, the provisions of the "Public Health Act, 1848," relating to private improvement expenses, as amended by any subsequent Act of Parliament, shall be deemed to be incorporated with this Act, so far as may be required for carrying into effect any provision of this Act.

### 13. *Pollution of Streams.*

Incorporation of provisions of 11 & 12 Vict. c. 63, as to private improvement expenses.

## 10. POWER TO TAKE LANDS.

By the 28 & 29 Vict. c. 75, s. 7, a sewer authority shall, for the purposes of this Act, have the powers of taking lands conferred on local boards by the seventy-fifth section of the "Local Government Act, 1858" (a), and any Act amending the same.

Power to take lands.

## 11. COMPENSATION.

By the 28 & 29 Vict. c. 75, s. 8, full compensation shall be made, out of any fund or rate applicable to the purposes of this Act, to all persons sustaining any damage by reason of the exercise of any of the powers of this Act; and in case of dispute as to amount, the same shall be settled by arbitration, as provided in the "Public Health Act, 1848," or any Act amending the same, or if the compensation claimed do not exceed the sum of twenty pounds, the same may be ascertained by and recovered before justices in a summary manner, in manner provided by the Acts mentioned in this section.

Compensation.

See, as to compensation, the 11 & 12 Vict. c. 63, ss. 123-128, *ante*, 502-504, and the 21 & 22 Vict. c. 98, s. 64, *ante*, 504.

## 12. POWER TO COMBINE.

By the 28 & 29 Vict. c. 75, s. 9, two or more sewer authorities, including under that expression for the purposes of this section local boards, may combine together for the purpose of executing and maintaining any works that may be for the benefit of their respective districts, and all moneys they may agree to contribute for the execution and maintenance of such common works shall, in the case of each authority, be deemed to be expenses incurred by them in the execution of works within their district, and shall be raised accordingly.

Power of sewer authorities to combine.

## 13. POLLUTION OF STREAMS.

By the 28 & 29 Vict. c. 75, s. 10, a sewer authority, with the sanction of her Majesty's Attorney-General in England, and of the Attorney-General for Ireland in Ireland, and of the Lord Advocate in Scotland, may, either in its own name or in the name of any other person, with the consent of such person, take such proceedings by indictment, Bill in Chancery, action, or otherwise, as it may deem advisable, for the purpose of protecting any watercourse within its jurisdiction from pollutions arising from sewage either within or without its district; and the costs of and incidental to any such proceedings, including any costs that may be awarded to the defendant, shall be deemed to be expenses properly incurred by the sewer authority in carrying into effect the purposes of this Act.

Sewer authority may take proceedings to prevent pollution of streams.

(a) *Ante*, 475.



15. *Disposal of Sewage.*

Sewers not allowed to drain into any stream, etc.

Power to public works loan commissioners to lend money to sewer authorities.

Sewer authority may enter into contract for supply of sewage.

Application of 27 & 28 Vict. c. 114, to works, etc., for supply of sewage.

Sewer authority may exercise without their district powers in relation to distribution of sewage.

Sewer authority may purchase land for distribution of sewage in pursuance of sect. 75 of "Local Government Act."

21 & 22 Vict. c. 98.

Power for sewer authority to deal with land appropriated to sewage purposes.

Sect. 11. Nothing contained in this Act, or in the Acts referred to therein, shall authorize any sewer authority to make a sewer so as to drain direct into any stream or watercourse.

## 14. LOANS.

By the 28 & 29 Vict. c. 75, s. 12, the public works loan commissioners, as defined by the "Public Works Loan Act, 1858," may advance to any sewer authority, upon the security of any rate applicable to the purposes of this Act, without any further security, such sums of money as may be recommended by one of her Majesty's principal secretaries of state, to be applied by such authority in carrying into effect the purposes of this Act.

## 15. DISPOSAL OF SEWAGE.

By the 28 & 29 Vict. c. 75, s. 14, the sewer authority of any place may from time to time, for the purpose of utilizing its sewage, agree with any person or body of persons, corporate or unincorporate, as to the supply of such sewage, and works to be made for the purpose of that supply, and the parties to execute the same and to bear the costs thereof, and the sums of money, if any, to be paid for that supply; provided that no contract shall be made for the supply of sewage for a period exceeding twenty-five years.

As to contribution by the sewers authority to works under these contracts, see the 30 & 31 Vict. c. 113, s. 15, *post*, 533.

Sect. 15. The making of works of distribution and service for the supply of sewage to lands for agricultural purposes shall be deemed an "improvement of land" authorized by the "Land Improvement Act, 1864," and the provisions of that Act shall apply accordingly.

Sect. 16 relates to Ireland only.

By the 30 & 31 Vict. c. 113, s. 3, a sewer authority (*a*) may, without their district, provide any works and do any act for the purpose of receiving, storing, disinfecting, or distributing sewage which they may provide or do within their district, subject to the conditions to which they would be subject in providing such works or doing such acts within their district, and to the conditions imposed on local boards in carrying into effect the fourth section of the "Local Government Act (1858) Amendment Act, 1861."

Sect. 4. A sewer authority (*a*) for the purpose of receiving, storing, disinfecting, and distributing sewage, and of the construction of any works for receiving, storing, disinfecting, or distributing sewage, and of the construction of any sewer or drain, or for any of the above purposes, may purchase or take on lease any lands either within or without their district, and shall for carrying into effect any such purchase have all the powers of taking land conferred by the seventy-fifth section of the "Local Government Act, 1858" (*b*), as amended by this Act.

Sect. 5. A sewer authority (*a*) may deal with any land held by them for the purpose of receiving, storing, disinfecting, or distributing sewage in such manner as they deem most profitable, either by leasing the same for a period not exceeding seven years for agricultural purposes, or by contracting with some person to take the whole or a part of the produce of such land, or by farming such land and disposing of the produce thereof; subject to this restriction, that in any appropriation which may be made

(*a*) The words "sewer authority" in this section include a local board;      sec sect. 2, *ante*, 523.  
(*b*) *Ante*, 475.

of land held by a sewer authority for the above purposes, care shall be taken that provision be made for receiving, storing, disinfecting, or distributing all the sewage which it is the duty of the sewer authority to cause to be disposed of in that manner.

Sect. 15. Where a sewer authority, or any corporate or other body, under any power enabling them in that behalf, or by any agreement confirmed by Parliament, has agreed or hereafter agrees with any person or persons or body of persons, corporate or unincorporate, as to the supply of all or any of the sewage of any place, and the works to be made for the purpose of that supply, they may contribute to the expense of carrying into execution by such person or persons or body of persons all or any of the purposes of such agreement, and may become shareholders in any company with which any agreement in relation to the matters aforesaid has been or may hereafter be entered into by such sewer authority or corporate or other body, or to or in which the benefits and obligations of such agreement may have been or may be transferred or vested; and all expenditure in consequence of the exercise of the power hereby conferred shall be deemed to have been incurred by such sewer authority or corporate or other body in the construction or due maintenance of the necessary sewers for carrying away the said sewage, and shall be provided for accordingly.

### 17. *Legal Proceedings.*

Sewer authority, etc., may contribute to works under contracts relating to supply of sewage.

### 16. HOSPITALS.

By the 28 & 29 Vict. c. 90, s. 37, the sewer authority, or in the metropolis the nuisance authority, may provide for the use of the inhabitants within its district hospitals or temporary places for the reception of the sick.

Power to provide hospitals.

Such authority may itself build such hospitals or places of reception, or make contracts for the use of any existing hospital or part of a hospital, or for the temporary use of any place for the reception of the sick.

It may enter into any agreement with any person or body of persons having the management of any hospital for the reception of the sick inhabitants of its district, on payment by the sewer authority of such annual or other sum as may be agreed upon.

The carrying into effect this section shall in the case of a sewer authority be deemed to be one of the purposes of the said "Sewage Utilization Act, 1865," and all the provisions of the said Act shall apply accordingly.

Two or more authorities having respectively the power to provide separate hospitals may combine in providing a common hospital, and all expenses incurred by such authorities in providing such hospital shall be deemed to be expenses incurred by them respectively in carrying into effect the purposes of this Act.

By the 30 & 31 Vict. c. 113, s. 16, the words "sewer authority" in this section are to include a local board.

By the 31 & 32 Vict. c. 115, s. 10, the sewer authority, or in the metropolis the nuisance authority, shall have the like power to make provision for the temporary supply of medicine and medical assistance for the poorer inhabitants as it now has to provide hospitals or temporary places for the reception of the sick under the thirty-seventh section of the "Sanitary Act, 1866," but such power to make provision for the temporary supply of medicine and medical assistance shall not be exercised without the sanction of her Majesty's Privy Council.

Amendment of sect. 37 of 29 & 30 Vict. c. 90.

### 17. LEGAL PROCEEDINGS.

By the 29 & 30 Vict. c. 90, s. 45, if any person wilfully damages any works or property belonging to any local board, sewer authority, or

Penalty for wilful damage of works.

### 17. *Legal Proceedings.*

Incorporation of sanitary authorities.

Appearance of local authorities in legal proceedings.

Mode of proceeding where sewer authority has made default in providing sufficient sewers, etc.

Recovery of certain expenses of water supply.

Recovery of penalties.

Provision for recovery of expenses by Secretary of State.

nuisance authority, he shall be liable to a penalty not exceeding five pounds.

Sect. 46. The following bodies, that is to say, local boards, sewer authorities, and nuisance authorities, if not already incorporated, shall respectively be bodies corporate designated by such names as they may usually bear or adopt, with power to sue and be sued in such names, and to hold lands for the purposes of the several Acts conferring powers on such bodies respectively in their several characters of local boards, sewer authorities, or nuisance authorities.

Sect. 48. Any local board, sewer authority, or nuisance authority may appear before any justice or justices, or in any legal proceeding, by its clerk or by any officer or member authorized generally or in respect of any special proceeding by resolution of such board or authority, and such person being so authorized shall be at liberty to institute and carry on any proceeding which the nuisance authority is authorized to institute and carry on under the Nuisance Removal Acts or this Act.

Sect. 49. Where complaint is made to one of her Majesty's principal secretaries of state that a sewer authority or local board of health has made default in providing its district with sufficient sewers, or in the maintenance of existing sewers, or in providing its district with a supply of water in cases where danger arises to the health of the inhabitants from the insufficiency or unwholesomeness of the existing supply of water, and a proper supply can be got at a reasonable cost, or that a nuisance authority has made default in enforcing the provisions of the Nuisance Removal Acts, or that a local board has made default in enforcing the provisions of the "Local Government Act," the said secretary of state, if satisfied after due inquiry made by him that the authority has been guilty of the alleged default, shall make an order limiting a time for the performance of its duty in the matter of such complaint; and if such duty is not performed by the time limited in the order, the said secretary of state shall appoint some person to perform the same, and shall by order direct that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default; and any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court.

For the mode of recovering the expenses incurred by the secretary of state, see the 31 & 32 Vict. c. 115, s. 8, *infra*.

Sect. 50. All expenses incurred by a sewers authority or local board in giving a supply of water to premises under the provisions of the seventy-sixth section of the "Public Health Act, 1848" (a), or the fifty-first section of the "Local Government Act, 1858" (b), and recoverable from the owners of the premises supplied, may be recovered in a summary manner.

Sect. 54. Penalties under this Act, and expenses directed to be recovered in a summary manner, may be recovered before two justices in manner directed by the 11 & 12 Vict. c. 43, or any Act amending the same.

By the 31 & 32 Vict. c. 115, s. 8, whereas by the forty-ninth section of the "Sanitary Act, 1866," power is given to one of her Majesty's principal secretaries of state in case of any sewer authority, local board,

(a) *Ante*, 469.

(b) *Ante*, 471.

or nuisance authority making default in performing the sanitary duties specified in the said section, and imposed on them by Act of Parliament, to appoint a person to perform the same, and to direct by order that the expenses of performing the same, together with a reasonable remuneration to the person appointed for superintending such performance, and amounting to a sum specified in the order, together with the costs of the proceedings, shall be paid by the authority in default, and that any order made for the payment of such costs and expenses may be removed into the Court of Queen's Bench, and be enforced in the same manner as if the same were an order of such Court: and whereas it is expedient to make further provision for enforcing payment of any sum so specified as aforesaid in the order of the secretary of state, together with the costs of the proceedings occasioned by the default made in payment of such sum:

Be it enacted, that the sum so specified in the order of the secretary of state, together with the costs of the proceedings, shall be deemed to be expenses properly incurred by the authority in default, and to be a debt due from such authority, and payable out of any moneys in the hands of such authority or their officers, or out of any rate applicable to the payment of any expenses properly incurred by the defaulting authority, and which rate is in this section referred to as the local rate; and in the event of any authority refusing to pay any such sum with costs as aforesaid for a period of fourteen days after demand, the secretary of state may by precept empower any person to levy by and out of the local rate such sum (the amount to be specified in the precept) as may, in the opinion of the said secretary of state, be sufficient to defray the debt so due from the defaulting authority, and all expenses incurred in consequence of the non-payment of such debt; and any person or persons so empowered shall have the same powers of levying the local rate, and requiring all officers of the defaulting authority to pay over any moneys in their hands, as the defaulting authority itself would have in the case of expenses legally payable out of a local rate to be raised by such authority; and the said person or persons, after repaying all sums of money so due in respect of the precept, shall pay the overplus, if any (the amount to be ascertained by the secretary of state), to or to the order of the defaulting authority.

Sect. 9. Penalties under any section incorporated with this Act shall be recovered in manner directed by the 11 & 12 Vict. c. 43.

As to recovery  
of penalties.

All powers conferred by this Act shall be deemed to be in addition to and not in derogation of any other powers conferred by any other Act of Parliament, and any such other powers may be exercised as if this Act had not passed.

Nothing in this Act contained shall be deemed to exempt any person from any penalty to which he would have been liable if this Act had not been passed.

Provided that no person who has been adjudged to pay any penalty in pursuance of this Act shall for the same offence be liable to a penalty under any other Act.

### III. *Public Improvement Act.*

By the 23 & 24 Vict. c. 30, after reciting that it is expedient that facility should be given for the purpose of effecting local improvements beneficial to the health and comfort of the people, it is enacted as follows:

Sect. 1. It shall be lawful for the ratepayers of any parish maintaining its own poor, the population of which, according to the last account from time to time taken thereof by the authority of Parliament, exceeds

Ratepayers may  
hold land, etc.,  
for purpose of  
forming public

4. *Forms.*

walks, etc., and  
levy rates for  
maintaining the  
same, etc.

Adoption of Act,  
according to  
9 & 10 Vict.  
c. 74.

As to public  
baths and wash-  
houses.

Ratepayers,  
after notice  
given, to rate  
parishes.

Corporate bodies  
may attend and  
vote.

One-half of the  
estimated cost  
to be raised by  
private subscrip-  
tion.

Amount of rate.

five hundred persons, to purchase or lease lands, and to accept gifts and grants of land, for the purpose of forming any public walk, exercise or play ground, and to levy rates for maintaining the same, and for removal of any nuisances or obstruction to the free use and enjoyment thereof, and for improving any open walk or footpath, or placing convenient seats, or shelters from rain, and for other purposes of a similar nature.

Sect. 2. This Act may be adopted for any borough, or for any parish having a population of five hundred or upwards (according to the last account for the time taken by authority of Parliament), in the same manner as the 9 & 10 Vict. c. 74, may be adopted in such borough or parish.

See the 9 & 10 Vict. c. 74, *Vol. I.*, tit. "*Baths and Washhouses.*"

Sect. 3. Where the Act is adopted in a borough or in such a parish, the provisions of the 9 & 10 Vict. c. 74, for the purposes below specified applicable in the like cases where that Act is adopted, shall take effect for the purposes of this Act, viz. : All the provisions concerning

1. The authority by which and the manner in which the Act is to be carried into execution :
2. The mode of providing the expenses of carrying the Act into execution (excluding the provisions for borrowing money for such expenses) :
3. The appointment (in the case of a parish) of commissioners, the tenure of office and procedure, and the audit of their accounts :
4. The powers of the councils and commissioners for the purposes of the Act (except the powers of borrowing money).

Sect. 4. After the adoption of this Act it shall be lawful for the ratepayers in meeting assembled to rate such parish to a separate rate, to be called the " parish improvement rate ;" provided that such rate be agreed to by a majority of at least two-thirds in value of the ratepayers assembled at such meeting.

Sect. 5. Corporate bodies shall be allowed to attend meetings to be held as aforesaid, and to vote thereat by some person to be deputed by them for that purpose under their corporate seal.

Sect. 6. Provided always, that previous to any such rate being imposed a sum in amount not less than at least one half of the estimated cost of such proposed improvement shall have been raised, given, or collected by private subscription or donation.

Sect. 7. Such rate shall not exceed sixpence in the pound.

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#### IV. *Forms (a).*

1. *Voting Paper for the Election of Members.*
  2. *Mortgage of Rates.*
  3. *Transfer of Mortgage.*
  4. *Distress Warrant.*
- 

(a) As it would have been impossible within any reasonable compass to give all the forms required in working out these Acts, it has been thought advisable to insert only those provided in the Acts.

5. Conviction.
6. Order to Permit Execution of Works by Owners.
7. Voting-paper for the Adoption of the 21 & 22 Vict. c. 98.
8. Order charging Premises with Money laid out for Private Improvement.
9. Notice to the Owner to Sewer, Pave, etc.

District of

(1) Form of voting-paper for the election of members.

No. of Voting-Paper.	Name and Address of Voter.	Number of Votes.	
		As Owner.	As Ratepayer.

*Directions to the Voter.*

The voter must write his initials against the name of every person for whom he votes, and must sign this paper.

If the voter cannot write, he must affix his mark, but such mark must be attested by a witness, and such witness must write the initials of the voter against the name of every person for whom the voter intends to vote.

If a proxy vote, he must in like manner write his initials, sign his own name, and state in writing the name of the corporation or company for whom he is proxy.

Initials of the Voter against the Names of the Persons for whom he intends to vote.	Names of the Persons nominated.	Residence of the Persons nominated.	Quality or Calling of the Persons nominated.	Names of the Nominators.	Address of the Nominators.
.	.	.	.	.	.
.	.	.	.	.	.
.	.	.	.	.	.
.	.	.	.	.	.
.	.	.	.	.	.

*I vote for the persons in the above list against whose names my initials are placed.*

*Signed  
or the mark of*

*Witness to the mark.*

or proxy for

This form is given in Schedule (A.) to the 11 & 12 Vict. c. 63.

*By virtue of the "Public Health Act, 1848," the local board of health for the district of \_\_\_\_\_ in consideration of the sum of \_\_\_\_\_ paid to the treasurer of the said district by A.B. of \_\_\_\_\_ for the purposes of the said Act, do grant and assign unto the said A. B., his executors, administrators, and assigns, such proportion of the rates arising or accruing by virtue of the said Act from [the rates mortgaged] as the said sum of \_\_\_\_\_ doth or shall bear to the whole sum which is or shall be borrowed upon the credit of the said rates, to hold to the said A. B., his executors, administrators, and as-*

(2) Form of mortgage of rates.

*Forms.*

*signs, from the day of the date hereof until the said sum of* \_\_\_\_\_ *with interest at the rate of* \_\_\_\_\_ *per centum per annum for the same, shall be fully paid and satisfied: And it is hereby declared, that the said principal sum shall be repaid on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *at [place of payment]. Dated this* \_\_\_\_\_ *day of* \_\_\_\_\_ *one thousand eight hundred and* \_\_\_\_\_

[In case of a non-corporate district, to be signed by five members at least of the local board of health, and sealed with their seal; in case of a corporate district, to be sealed with the common seal.]

This form is given in Schedule (B.) to the 11 & 12 Vict. c. 63.

(3) Form of transfer of mortgage.

*I, A. B., of* \_\_\_\_\_ *in consideration of the sum of* \_\_\_\_\_ *paid to me by C. D., of* \_\_\_\_\_ *do hereby transfer to the said C. D., his executors, administrators, and assigns, a certain mortgage bearing date the* \_\_\_\_\_ *day of* \_\_\_\_\_ *and made by the local board of health for the district of* \_\_\_\_\_ *for securing the sum of* \_\_\_\_\_ *and interest thereon at* \_\_\_\_\_ *per centum per annum [or if such transfer be by endorsement on the mortgage, insert, instead of the words immediately following the word "assigns," the within security,] and all my right, estate, and interest in and to the money thereby secured, and in and to the rates thereby assigned. In witness whereof I have hereunto set my hand and seal, this* \_\_\_\_\_ *day of* \_\_\_\_\_ *one thousand eight hundred and* \_\_\_\_\_

*A. B. (l.s.)*

This form is given in Schedule (C.) to the 11 & 12 Vict. c. 63.

(4) Form of distress warrant.

*To A. B., collector of rates, and to all constables and peace officers.*  
*County of* \_\_\_\_\_ *Whereas complaint hath been duly made by A. B., one of*  
*[or borough, etc.]* } *the collectors for the district of* \_\_\_\_\_ *under and by*  
*to wit.* } *virtue of the "Public Health Act, 1848," that C. D. of,*  
*etc., hath not paid and hath refused to pay the sum of* \_\_\_\_\_ *duly assessed*  
*upon him in and by a certain rate bearing date on or about the* \_\_\_\_\_ *day*  
*of* \_\_\_\_\_ *in the year of our Lord one thousand eight hundred and*  
*although the same hath been duly demanded of him: And whereas it appears*  
*to me, E. F., Esquire, one of her Majesty's justices of the peace in and for the*  
*said county [or borough, etc.], as well upon the oath of the said A. B. as other-*  
*wise, that the said sum of* \_\_\_\_\_ *hath been duly demanded in writing by*  
*him from the said C. D., and that the said* \_\_\_\_\_ *hath refused to pay the*  
*same for the space of fourteen days after such demand made, and doth refuse*  
*to pay the same: And whereas the said C. D. hath been duly summoned to ap-*  
*pear before me to show cause why the said sum should not be paid by him, and*  
*not having shown to me any sufficient cause why the same should not be paid,*  
*these are therefore, in her Majesty's name, to command you to levy the said*  
*sum of* \_\_\_\_\_ *and also the sum of* \_\_\_\_\_ *the costs of proceeding to*  
*obtain this warrant, by distress and sale of the goods and chattels of the said*  
*C. D., and your reasonable charges of taking, keeping, and selling the said dis-*  
*tress, rendering to him the overplus (if any), on demand; and if sufficient dis-*  
*tress cannot be found of the goods and chattels of the said C. D., that then you*  
*certify the same to me, together with this warrant, to the end that such further*  
*proceedings may be had therein as to the law doth appertain.*

*Given under my hand and seal, the* \_\_\_\_\_ *day of* \_\_\_\_\_ *in the*  
*year of our Lord* \_\_\_\_\_

*(Signed) E. F. (l.s.)*

This form is given in Schedule (D.) to the 11 & 12 Vict. c. 63.

(5) Form of conviction.

*County of* \_\_\_\_\_ *Be it remembered, that on the* \_\_\_\_\_ *day of* \_\_\_\_\_  
*[or borough, etc.]* } *in the year of our Lord* \_\_\_\_\_ *, A. B. is convicted*  
*to wit.* } *before me [or us]* \_\_\_\_\_ *one [or two] of her Ma-*

*jesty's justices of the peace in and for the county [or borough, etc.] of*  
 [here describe the offence generally, and the time and place when and where  
 committed, in the words of this Act, or as near thereunto as may be], *contrary*  
*to the "Public Health Act, 1848;" and I [or we] do adjudge that the said*  
*A. B. hath forfeited for his said offence the sum of [amount of penalty ad-*  
*judged], and that he do pay to C. D. the further sum of* as and for  
*his costs in this behalf.*

*Given under my hand and seal [or our hands and seals], the day and year*  
*first above written.*

(Signed)

(L.S.)

(L.S.)

This form is given in Schedule (E.) to the 11 & 12 Vict. c 63.

*County of* } *Whereas complaint hath been made to me, E. F., Esquire,*  
*[or borough, etc.]* } *one of her Majesty's justices of the peace in and for the*  
*to wit.* } *county [or borough, etc.] of* by *A. B., owner,*  
*within the meaning of the "Public Health Act, 1848," of certain premises, to*  
*wit, a house [as the case may be] situate in* street *[as the case may*  
*be] in the parish of* in the said county *[or borough, etc.], that C. D.*  
*the occupier of the said premises, doth prevent the said A. B. from obeying and*  
*carrying into effect the provisions of the said Act in this, to wit, that he the*  
*said C. D. doth prevent the said A. B. from* [here describe the works generally,  
 according to circumstances, for instance, thus: *constructing and laying down,*  
*in connection with the said house, a covered drain, so as to communicate with a*  
*[sewer or drain] of the local board of health of the district of* [or  
*a sewer, etc. which the local board of health of the district of* are  
*entitled to use, as the case may require], such sewer being within one hundred*  
*feet of the said house]: And whereas the said C. D., having been duly sum-*  
*moned to answer the said complaint, and not having shown sufficient cause*  
*against the same, and it appearing to me that the said works are necessary for*  
*the purpose of enabling the said A. B. to obey and carry into effect the provi-*  
*sions of the said Act, I do hereby order that the said C. D. do permit the said*  
*A. B. to execute the same in the manner required by the said Act.*

(6) Form of order  
to permit execu-  
tion of works by  
owners.

*Given under my hand and seal, this* day of *in the*  
*year of our Lord one thousand eight hundred and*

E. F. (L.S.)

This form is given in Schedule (F.) to the 11 & 12 Vict. c. 63.

*At a meeting held on the* day of *at the* of  
*, in the county of*, *it was agreed that the following*  
*resolution should be proposed to the owners and ratepayers:—*  
*"That the Local Government Act, 1858, be adopted in the*  
*of*."

(7) Voting-paper  
for the adoption  
of the 21 & 22  
Vict. c. 98.

	In favour of.	Against.	Number of Votes.	
			As Owner.	As Ratepayers.
Do you vote in favour of or against the Adoption of this Resolution?	J. S.			

John Smith,  
of 19, Fore Street.

*N.B.—The ratepayer will put his initials under the heading "in favour" or*  
*"against," according as he votes for or against the resolution. He is also re-*



Forms.

quired to subscribe his name and address at full length. If a voter cannot write, he must make his mark instead of initials, but such mark must be attested by a witness, and such witness must write the initials of the voter against his mark. If a proxy vote, he must add after his signature the words, "as proxy for," with the name of corporation or company for which he is proxy. This paper will be collected on the \_\_\_\_\_ of \_\_\_\_\_, between the hours of \_\_\_\_\_ and \_\_\_\_\_

TAKE NOTICE.—"If any person wilfully commits any of the acts following, that is to say, fabricates in whole or in part, alters, defaces, destroys, abstracts, or purloins any voting paper, or personates any person entitled to vote in pursuance of the "Public Health Act, 1848," or this Act, or falsely assumes to act in the name or on the behalf of any person so entitled to vote, or interrupts the distribution of any voting-papers, or distributes the same under a false pretence of being lawfully authorized so to do, he shall for every such offence be liable, on conviction before two justices, to be imprisoned in the common gaol or house of correction for any period not exceeding three months, with or without hard labour." (Local Government Act, 1858.)

(Signed by the summoning officer.)

This form is given in the Schedule to the 21 & 22 Vict. c. 98.

(8) Order charging premises with money laid out for private improvement.

By virtue of the "Public Health Act, 1848," the Local Board of Health for the District of \_\_\_\_\_ do hereby declare and absolutely order that the inheritance of the [dwelling-house, shop, lands, and premises, as the case may be], situate in \_\_\_\_\_ Street, in the parish of \_\_\_\_\_ within the said district, and now in the occupation of \_\_\_\_\_ shall be absolutely charged with the sum of \_\_\_\_\_ pounds, paid by \_\_\_\_\_ of \_\_\_\_\_ for the improvement by drainage and water supply [as the case may be] of the same dwelling-house, shop, lands, and premises [as the case may be], together with interest for the same from the date hereof at \_\_\_\_\_ pounds per centum per annum, until full payment thereof; and also all costs incurred by the said \_\_\_\_\_ his executors, administrators, or assigns, under this security, shall be fully paid and satisfied: And we hereby further declare that the said principal and interest moneys shall be paid and payable by the owner or occupier of the said premises to the said \_\_\_\_\_ his executors, administrators, and assigns, in manner following; (that is to say,) the interest on such principal sum of \_\_\_\_\_ pounds, or on so much thereof as shall from time to time remain due and payable under this order, shall be paid and payable by equal half-yearly payments whilst payable on the \_\_\_\_\_ day of \_\_\_\_\_ and the \_\_\_\_\_ day of \_\_\_\_\_ in every year, the first payment thereof to be made on the \_\_\_\_\_ day of \_\_\_\_\_ next, and such principal sum of \_\_\_\_\_ pounds shall be paid and payable by \_\_\_\_\_ equal annual instalments on the \_\_\_\_\_ day of \_\_\_\_\_ in each of the next succeeding \_\_\_\_\_ years, towards the discharge of the same principal sum, until the whole shall be fully satisfied and discharged.

This form is given by the 21 & 22 Vict. c. 98.

(9) Notice to the owner to sewer, pave, etc.

Local board of health for \_\_\_\_\_ . The \_\_\_\_\_ of \_\_\_\_\_ in the county \_\_\_\_\_ of \_\_\_\_\_  
To \_\_\_\_\_ the owner of certain premises fronting, adjoining, or abutting upon a certain street called \_\_\_\_\_, within the said [borough or district, as the case may be].

Whereas the said street is not sewered, levelled, paved, flagged, and channelled to the satisfaction of the above-named local board of health; and whereas your said premises front, adjoin, or abut on certain parts of the said street which require to be sewered, levelled, paved, flagged, and channelled: Now, therefore, the said local board of health hereby give you notice (in pursuance of the statute in that case made and provided) to sewer, level, pave, flag, and channel the same within the space of [state the time] from the date hereof, in manner following; (that is to say,) the sewers to be laid or made

[here describe the mode to be adopted and the material to be used], of the sizes and forms, and at the rate or rates of inclination shown on the plans and sections of the works as prepared by the surveyor of the local board.

Each gully for surface draining, and its connection with the sewer, to be placed as shown on the said plans, and to be constructed of the forms, materials, and dimensions as shown on the said plans.

A foundation for the carriageway and footway in the said street to be formed in the following manner [here describe the mode to be adopted and the material to be used], and the said carriageway and footway to be paved [here describe the mode to be adopted and the material to be used].

The channel stones to be [here describe the mode to be adopted and the material to be used]. The curb or side stones to be [here describe the mode to be adopted and the material to be used].

The whole of the above-mentioned works to be executed by you in accordance with the plans and sections herein-before referred to, and now lying for inspection by you at the office of the local board, situate in \_\_\_\_\_ street, in \_\_\_\_\_ aforesaid, and the dimensions, widths, and levels shown thereon, and to be done in a good, workmanlike, and substantial manner, to the satisfaction of the said local board of health or their surveyor.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ One thousand eight hundred and \_\_\_\_\_

Clerk to the said local board of health.

This form is given by the 24 & 25 Vict. c. 61.

## **Lodging-Houses. (a)**

Of late years several Acts have been passed for the purpose of compelling a due regard to the sanitary condition of the community by providing for the regulation of lodging-houses, and by encouraging the establishment of lodging-houses and dwelling-houses for the poorer classes. As these Acts all bear indirectly upon one another, it has been thought advisable to group them under one head, and to treat of the subject under the following subdivisions:—

- I. *Acts for the Regulation of Lodging-houses* (14 & 15 Vict. c. 28; 16 & 17 Vict. c. 41), p. 541.
- II. *Acts for Encouraging the Erection of Dwelling-houses for the Poorer Classes* (14 & 15 Vict. c. 34; 29 Vict. c. 28; 30 Vict. c. 28; 18 & 19 Vict. c. 132), p. 547.
- III. *Acts for Improving Artizans' and Labourers' Dwellings* (31 & 32 Vict. c. 130), p. 563.

### **I. Acts for the Regulation of Lodging-Houses.**

By the 14 & 15 Vict. c. 28, which by sect. 1 may be cited as the "Common Lodging-Houses Act, 1851," after reciting that it would tend greatly to the comfort and welfare of many of her Majesty's poorer sub-

(a) As to the registration of common lodging-houses in districts under the "Local Government Act," see the 11 & 12 Vict. c. 63, ss. 66, 67, tit. "Local Government," ante, 459-461.

See also the 29 Vict. c. 30, s. 35, post, tit. "Nuisances," as to the power to make regulations for lodging-houses not coming within the provisions of the 14 & 15 Vict. c. 28.

1. *Acts for the Regulation of Lodging-houses.*

Interpretation of terms in this Act.

jects if provision were made for the well-ordering of common lodging-houses, it is enacted as follows :—

Sect. 2. The following words and expressions in this Act have, for the purposes and execution of this Act, the following meanings; to wit,

The word “place” includes county, riding, hundred, and other division or part of a county, city, borough, parish, district, and other place whatsoever;

The word “borough,” and the expressions “mayor, aldermen, and burgesses,” and “borough fund,” have respectively the same meaning as in the Act for the regulation of municipal corporations (a);

The expression “improvement Act” means an Act for regulating and managing the police of, and for draining, cleansing, paving, lighting, watching, and improving a place, and an Act for any of those purposes;

The expression “common lodging-house” includes in any case in which only a part of a house is used as a common lodging-house, the part so used of such house.

By whom the Act is to be executed.

Sect. 3. This Act shall be executed as follows; to wit,

1. Within and for all or any part of the metropolitan police district, by “the commissioners of police for the metropolis,” or such one of them as is from time to time appointed in that behalf by one of her Majesty’s principal secretaries of state.
2. Within and for all and any part of any place not being within the metropolitan police district, but being now or hereafter the district of a local board of health, by the local board of health of the district;
3. Within and for all and any part of any other place not being within the metropolitan police district, and not being the district of a local board of health, but being now or hereafter an incorporated borough regulated under the Act for the regulation of municipal corporations, or any Act for the amendment thereof, or any charter granted in pursuance of any such Act, by the mayor, aldermen, and burgesses of the borough acting by the council of the borough;
4. Within and for all and any part of any other place not being within the metropolitan police district, and not being the district of a local board of health, and not being such an incorporated borough, but being now or hereafter the place within the limits of an improvement Act, by the commissioners, trustees, or other body, by whatever name known, for executing the improvement Act;
5. Within and for all and any part of any other place not being one of the places hereinbefore specified by the justices of the peace acting in petty sessions for the place (b).

As to expenses of executing this Act.

Sect. 4. The expenses of and incident to the executing of this Act shall be borne and paid as follows; to wit,

1. With respect to the metropolitan police district, as part of the general expenses of executing the Acts for the time being in force relating to the metropolitan police force;
2. With respect to the district of a local board of health, as part of the expenses of executing the Acts for the time being in force

(a) It is presumed this means the 5 & 6 Will. 4, c. 76. “Borough” is defined by sect. 142; and the expression “mayor, aldermen, and burgesses” means the body corporate of the boroughs enumerated in schedules A and B of that statute. “Borough fund” is described in sect. 92. See

Vol. I., tit. “Corporations municipal.”

(b) By the 16 & 17 Vict. c. 41, s. 13, *post*, 547, where there are no petty sessions for a place, the Act may be executed by the justices acting in petty sessions for the petty sessional division within which such place is comprised.

relating to the local board of health, and as charged upon and payable out of the moneys carried, under the "Public Health Act, 1848," to the district fund account of the local board of health;

3. With respect to an incorporated borough, as part of the expenses of carrying into execution within the borough the provisions of the Act for the regulation of municipal corporations, and as charged upon and payable out of the borough fund of the borough.
4. With respect to a place within the limits of an improvement Act, as part of the general expenses of executing that Act, and as charged upon and payable out of the moneys from time to time applicable for those expenses;
5. With respect to a place in which this Act is executed by justices in petty sessions, as part of the general expenses of the constableness of the place, and as charged upon and payable out of the moneys from time to time applicable for those expenses:

And the moneys from time to time required for the payment of the expenses of and incident to the execution of this Act shall be assessed, levied, raised, recovered, and paid accordingly.

Sect. 5. The expression in this Act "the local authority" means, with respect to the purposes and execution of this Act with respect to any place, the body or person by this Act authorized to execute with respect to the place the several provisions of this Act.

1. *Acts for the Regulation of Lodging-houses.*

Meaning of the term "the local authority."

Sect. 6. Within three months after the passing of this Act the local authority shall, and from time to time thereafter the local authority may, give to the keeper of every common lodging-house (a) already or hereafter within the jurisdiction under this Act of the local authority, notice in writing of this Act, and shall give such notice by leaving the same for such keeper at the house, and shall by such notice require the keeper to register the house as by this Act provided, and such notice may be in the form in the schedule to this Act annexed, or to the like effect.

Notice of this Act to be given to the keepers of common lodging-houses.

Sect. 7. The local authority shall keep a register in which shall be entered the names and residences of the keepers of all common lodging-houses within the jurisdiction of the local authority, and the situation of every such house, and the number of lodgers authorized according to this Act to be received therein.

Registers of common lodging-houses to be kept.

Sect. 8. After one month after the giving of such notice to register as by this Act provided, the keeper of any common lodging-house or any other person shall not receive any lodger in such house until the same has been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and has been registered as by this Act provided (b).

Lodgers not to be received in common lodging-houses until registered under this Act.

Sect. 9. The local authority may from time to time make regulations respecting common lodging-houses within its jurisdiction for all or any of the purposes respecting the same for which the local board of health are by the "Public Health Act, 1848," authorized to make bye-laws (c), and for the well-ordering of such houses, and for the separation of the sexes therein: Provided always, that the regulations made under this Act by the local authority shall not be in force until they have been confirmed by one of her Majesty's principal secretaries of state (d).

Power to local authority to make regulations respecting common lodging-houses.

(a) By the 29 & 30 Vict. c. 90, s. 41, *post*, tit. "Nuisances," if the inmates allege that they are members of the same family, the burden of proving that fact is cast upon them.

(b) And see now the 16 & 17 Vict.

c. 41, ss. 3, 4, *post*, 545.

(c) See the 11 & 12 Vict. c. 63, s. 66, *ante*, 420.

(d) By the 16 & 17 Vict. c. 41, s. 6, *post*, 546, the local authority may require an additional supply of water.

**1. Acts for the Regulation of Lodging-houses.**

Power to local authority to impose penalties for offences committed against regulations.

Sect. 10. The local authority shall have the same power of imposing penalties on offenders against the said regulations, subject to the same restrictions, as the local board with respect to offenders against such bye-laws, and such penalties shall be recoverable in the same way as is provided in the said Act with respect to the penalties imposed on offenders against such bye-laws (*a*); and a copy of the said regulations, purporting to be signed by the secretary of state, and also to be signed by the local authority (or to be sealed with the seal of the same, in case it have a seal), shall be receivable in evidence of such regulations, and of the duly making and confirming thereof.

Keepers of common lodging-houses to give notice of fever, etc., therein.

Sect. 11. The keeper of a common lodging-house shall, when a person in such house is ill of fever or any infectious or contagious disease, give immediate notice thereof to the local authority, or some officer of the local authority, and also to the poor-law medical officer and the poor-law relieving officer of the union or parish in which the common lodging-house stands (*b*).

As to inspection of common lodging-houses.

Sect. 12. The keeper of a common lodging-house, and every other person having or acting in the care or management thereof, shall, at all times when required by any officer of the local authority, give him free access to such house or any part thereof.

As to cleansing of common lodging-houses.

Sect. 13. The keeper of a common lodging-house shall thoroughly cleanse all the rooms, passages, stairs, floors, windows, doors, walls, ceilings, privies, cesspools and drains thereof, to the satisfaction of and so often as shall be required by or in accordance with any regulation or bye-law of the local authority, and shall well and sufficiently, and to the like satisfaction, limewash the walls and ceilings thereof in the first week of each of the months of April and October in every year.

Penalty for offences against this Act.

Sect. 14. If the keeper of a common lodging-house, or any other person having or acting in the care or management thereof, offend against any of the provisions of this Act, or any of the bye-laws or regulations made in pursuance of this Act, or if any person in any common lodging-house be confined to his bed for forty-eight hours by fever or any infectious or contagious disease, without the keeper of such house giving notice thereof as required by this Act, every person so offending shall for every such offence be liable to a penalty not exceeding five pounds, and to a further penalty not exceeding forty shillings for every day during which the offence continues (*c*): Provided always, that this Act shall not exempt any person from any penalty or other liability to which he may be subject irrespective of this Act.

Recovery of penalties.

Sect. 15. The clauses and provisions of the "Railways Clauses Consolidation Act, 1845," "with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices," are for the purposes and execution of this Act incorporated with this Act (*d*).

General powers of local authority, etc.

Sect. 16. The local authority, and all justices, constables, and others shall respectively have full jurisdiction, powers, authorities and indemnities for executing the several provisions of this Act; and the restrictions of the "Public Health Act, 1848," as to the hours within which

(*a*) See the 11 & 12 Vict. c. 63, ss. 115, 116, 129-140, tit. "*Local Government*," ante, 492, 505-509.

(*b*) See the 16 & 17 Vict. c. 41, s. 7, post, 546, as to the removal of sick persons to hospitals.

(*c*) By the 16 & 17 Vict. c. 41, s. 11, post, 547, any person making default in payment of the penalty imposed may be imprisoned for any term not exceeding three months.

(*d*) See tit. "*Railway*," Vol. V.

common lodging-houses may be entered by persons authorized by a local board of health, shall not apply to this Act (a).

Sect. 17. This Act shall not extend to the city of London or the liberties thereof.

Sect. 18. Nothing in this Act shall extend to Scotland.

#### SCHEDULE.

##### Form of Notice.

*Take notice, that on the — day of — an Act called "The Common Lodging-houses Act, 1851," was passed, and that before the — day of —, you, being the keeper of a common lodging-house within [here state the place over which the jurisdiction of the local authority giving the notice extends], must have your common lodging-house registered, and that the register is to be kept at [here state where the register is to be kept], and that if you do not have your common lodging-house so registered you will be liable to a penalty not exceeding five pounds for every lodger whom you receive in your common lodging-house while it is not so registered; and that on your applying to [here give the name and address of the person to keep the register] he will register your common-lodging house free of all charge to you.*

*Dated — etc.*

By the 16 & 17 Vict. c. 41 (August 4th, 1853), after reciting that it is expedient to extend the provisions of the "Common Lodging-houses Act, 1851," it is enacted as follows,—

Sect. 1. This Act may be cited for any purposes as "The Common Lodging-houses Act, 1853."

Sect. 2. "The Common Lodging-houses Act, 1851," and this Act shall be construed and executed as if they were one Act.

Sect. 3. After three months after the passing of this Act a person shall not keep a common lodging-house or receive a lodger therein until the house have been inspected and approved for that purpose by some officer appointed in that behalf by the local authority, and have been registered as by the recited Act provided; and a person shall not keep a common lodging-house unless his name as the keeper thereof be entered in the register kept under the recited Act: Provided always, that when the person so registered dies, his widow or any member of his family may keep the house as a common lodging-house for not more than four weeks after his death without being registered as the keeper thereof.

Sect. 4. The local authority may refuse to register as the keeper of a common lodging-house a person who does not produce to the local authority a certificate of character in such form as the local authority shall direct, signed by three inhabitant householders of the parish respectively rated to the relief of the poor of the parish within which the lodging-house is situate for property of the yearly rateable value of six pounds or upwards.

Sect. 5. A copy of an entry made in a register kept under the recited Act, certified by the person having the charge of the register to be a true copy, shall be received in all Courts and before all justices and on all occasions whatsoever as evidence, and be sufficient proof of all things therein registered, without production of the register or of any document, Act, or thing on which the entry is founded; and every person applying at a reasonable time shall be furnished gratis by the person having such charge with a certified copy of any such entry.

1. Acts for the Regulation of Lodging-houses.

Act not to extend to the city of London.

Act not to extend to Scotland.

Short title.

Recited Act and this Act to be as one.

All common lodging-houses to be registered before being used, and to be kept only by registered keepers.

Local authority may refuse to register houses, if keepers do not produce certificate of character.

Evidence of register.

(a) See the 11 & 12 Vict. c. 63, s. 66, *ante*, 459. By sect. 12, *ante*, 544, the officer "is to have access at all times."

1. *Acts for the Regulation of Lodging-houses.*

Power to local authority to require an additional supply of water to common lodging-houses.

As to removal of sick persons from common lodging-houses to hospitals, etc.

Power to order reports from keepers of common lodging-houses kept for beggars and vagrants.

Power to town councils, etc., to remove causes of complaint certified under Nuisances Removal, etc., Act.

The Oxford commissioners and the Cambridge commissioners to act as the local authority under this Act.

Sect. 6. Where it appears to the local authority that a common lodging-house is without a proper supply of water for the use of the lodgers, and that such a supply can be furnished thereto at a reasonable rate, the local authority may by notice in writing require the owner or keeper of the common lodging-house, within a time specified therein, to obtain such supply, and to do all works necessary for that purpose; and if the notice be not complied with accordingly, the local authority may remove the common lodging-house from the register until it be complied with.

Sect. 7. When a person in a common lodging-house is ill of fever or any infectious or contagious disease, the local authority may cause such person to be removed to an hospital or infirmary, with the consent of the authorities thereof, and on the certificate of the medical officer of the parish, place, or district that the disease is infectious or contagious, and that the patient may be safely removed, and may, so far as the local authority think requisite for preventing the spread of disease, cause any clothes or bedding used by such person to be disinfected or destroyed, and may, if the local authority think fit, award to the owners of the clothes and bedding so disinfected or destroyed reasonable compensation for the injury or destruction thereof, and such compensation shall be paid to such owners by the proper officer of the parish or union in which the common lodging-house is situate, out of the rates applicable to the relief of the poor of such parish, the amount of such compensation being first certified in writing upon a list of such articles.

Sect. 8. The keeper of a common lodging-house in which beggars or vagrants are received to lodge, or other person having the care or management thereof, shall from time to time, if required by any order of the local authority served on such keeper or person, report to the local authority, or to such person or persons as the said local authority shall direct, every person who resorted to such house during the preceding day or night, and for that purpose schedules shall be furnished by the local authority to the persons so ordered to report, which schedules they shall fill up with the information required, and transmit to the local authority.

Sect. 9. The town council, trustees, commissioners, guardians, and other officers and boards specified in the first section of the "Nuisances Removal and Diseases Prevention Act, 1848," shall, on the receipt of a certificate of any police constable or of any officer appointed for the inspection of common lodging-houses by the local authority, stating the existence in or about any common lodging-house of any of the causes of complaint specified in that section, take all such proceedings as by that section are required to be taken by the town council, trustees, commissioners, guardians, and other officers and boards specified therein on a notice signed by two inhabitant householders, and in like manner as nearly as may be as if such notice had been given; and the local authority shall have the like powers, and shall take all such proceedings, on receipt of any such certificate of the existence of any such cause of complaint, as the town council, trustees, commissioners, guardians, and other officers or boards have and are empowered and required to take under the provisions of that Act.

Sect. 10. Provided always, notwithstanding any provision contained in this Act, that within the city of Oxford, or the parts within the jurisdiction of the commissioners for amending certain mileways leading to Oxford, and making improvements in the university and city of Oxford, the suburbs thereof, and the adjoining parish of Saint Clement (which commissioners are hereinafter called the Oxford commissioners), the several powers and duties assigned by this Act to any local authority shall, in so far as they are consistent with the laws under which the said Oxford commissioners act, be exercised by the said Oxford commissioners; and within the borough of Cambridge, or the parts within the

jurisdiction of the commissioners acting under an Act of the thirty-fourth year of the reign of King George the Third, for amending and enlarging the powers of a former Act of the same reign, for the better paving, cleansing, and lighting the town of Cambridge, for removing and preventing obstruction and annoyances, and for widening the streets, lanes, and other passages within that town (which commissioners are hereinafter called the Cambridge commissioners), the several powers and duties aforesaid shall, in so far as they are consistent with the laws under which the said Cambridge commissioners act, be exercised by the Cambridge commissioners.

Sect. 11. The fourteenth section of the recited Act extends to offences against any of the provisions of this Act, so as to render the offenders liable to the penalties therein expressed, and any person convicted of any offence against the recited Act and this Act, or either of them, may, in default of payment of the penalty imposed, be imprisoned for any term not exceeding three months in the manner provided by law in that behalf.

*2. Acts for encouraging the Erection of Dwelling-houses.*

As to offences against this Act

Sect. 12. Where a keeper of a common lodging-house, or a person having or acting in the care or management of a common lodging-house, is convicted of a third offence against the recited Act and this Act, or either of them, the justices before whom the conviction for such third offence takes place may, if they think fit, adjudge that he shall not at any time within five years after the conviction, or within such shorter period after the conviction as the justices think fit, keep or have or act in the care or management of a common lodging-house without the previous licence in writing of the local authority, which licence the local authority may withhold or may grant on such terms and conditions as they think fit.

Conviction for third offence to disqualify persons from keeping common lodging-house.

Sect. 13. In a case in which there are not petty sessions for a place firstly mentioned in section three of the recited Act, that Act and this Act may be executed within and for all and any part of such place by the justices of the peace acting in petty sessions in the petty sessional division within which such place is comprised.

Acts may be executed by justices at petty sessions.

14. Where in any place the recited Act and this Act are executed by justices in petty sessions, the expenses of and incident to the executing of the recited Act and this Act with respect to such petty sessional division shall be borne by and paid out of the rates for the relief of the poor of the several parishes or other places comprised therein in which any common lodging-house is situate (except so far as there are other moneys applicable to the purpose), and the amount of such expenses shall be ascertained and apportioned by such justices, and shall be paid accordingly as they order.

As to expenses of executing Act by justices.

## II. Acts for encouraging the Erection of Dwelling-houses for the Poorer Classes.

By the 14 & 15 Vict. c. 34 (a), intituled "An Act to encourage the Establishment of Lodging-houses for the Labouring Classes" [24th July, 1851,] reciting that it is desirable, for the health, comfort, and welfare of the inhabitants of towns and populous districts, to encourage the establishment therein of well-ordered lodging-houses for the labouring classes; it is enacted (s. 1), that in citing this Act for any purpose it shall be sufficient to use the expression "The Labouring Classes Lodging-houses Act, 1851."

Short title of Act.

(a) See the 29 Vict. c. 28, *post*, 557.



2. *Acts for encouraging the Erection of Dwelling-houses.*

Act may be adopted in certain boroughs and parishes.

Sect. 2. That this Act may be adopted for any incorporated borough in England regulated under an Act passed in the sixth year of the reign of his late Majesty, to provide for the regulation of municipal corporations, or any charter granted in pursuance of the said Act, or any Act passed for the amendment thereof, and also for any place being the district of any local board of health regulated under the "Public Health Act, 1848," or any Act passed for the amendment thereof, and also for any place being the district within the limits of any Act for the paving, lighting, watching, draining or otherwise improving of such place, and also, with the approval of one of her Majesty's principal secretaries of state, for any parish in England, having, according to the then last census, a population of not less than ten thousand, or being a parish in any such incorporated borough, having, according to the then last census, a population of not less than ten thousand, and also with the like approval for each of several parishes as by this Act in that behalf provided.

Interpretation of terms.

Sect. 3. That in this Act the following words and expressions shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction ; that is to say,

- "Parish" shall mean every place maintaining its own poor, and having a vestry ;
- "Borough" shall mean city, borough, port, cinque port or town corporate ;
- "District" shall mean any place being the district of such a local board of health, and shall also mean any place being the district within the limits of such an improvement Act ;
- "Ratepayers" shall mean all persons for the time being assessed to and paying rates for the relief of the poor of the parish ;
- "Churchwardens" shall mean also chapelwardens or other persons discharging the duties of churchwardens ;
- "Overseers" shall mean also any persons authorized and required to make and collect or cause to be collected the rate for the relief of the poor of the parish, and acting instead of overseers of the poor ;
- "Vestry" shall mean the inhabitants of the parish lawfully assembled in vestry, or for any of the purposes for which vestries are holden, except in those parishes in which there is a select vestry elected under 59 Geo. III. c. 12, or under 1 & 2 Wm. IV. c. 60, or elected under the provisions of any local Act of Parliament for the government of any parish by vestries, in which parishes it shall mean such select vestry, and shall also mean any body of persons, by whatever name distinguished, acting, by virtue of any Act of Parliament, prescription, custom or otherwise, as or instead of a vestry or select vestry ;
- "Board" shall mean, as regards the district of such a local board of health, such local board of health for the time being in office and acting as such local board of health, and, as regards the district within the limits of such an improvement Act, the commissioners, trustees, or other body of persons by whatever name distinguished for the time being in office and acting in the execution of such Act ;
- "Commissioners" shall mean the commissioners appointed in accordance with this Act for any parish, and for the time being in office and acting as such commissioners ;
- "Clerk" shall mean, as regards an incorporated borough, the town clerk of such borough, and, as regards a district, the clerk of the board of such district, and, as regards a parish, the clerk appointed pursuant to this Act by the commissioners ;
- "Justice" shall mean justice of the peace for the county, riding, division, liberty, borough, district, parish or place where the matter requiring the cognizance of justices shall arise :

"Improvement rates" shall mean the rates, tolls, rents, income and other moneys whatsoever which under the provisions of any such improvement Act shall be applicable for the general purposes of such Act:

"Lands" shall mean lands, tenements and hereditaments, of whatsoever nature or tenure;

Words importing the masculine gender shall include the feminine:

Words of the plural number shall include the singular, and words of the singular number shall include the plural.

Sect. 4. That the council of any such borough as aforesaid may, if they think fit, determine that this Act shall be adopted for such borough, and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such borough, and this Act shall be carried into execution in such borough, in accordance with such provisions and the laws for the time being in force relating to the municipal corporation of such borough.

*2. Acts for encouraging the Erection of Dwelling-houses.*

Council of any borough may adopt the provisions contained in this Act if they think fit.

Sect. 5. That the expenses of carrying this Act into execution in any such borough in which the council shall have resolved to adopt this Act for their borough shall be chargeable upon and paid out of the borough fund, and for that purpose the council may levy with and as part of the borough rate, or by a separate rate to be assessed, levied, paid and recovered in like manner and with the like powers and remedies in all respects as the borough rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly, as if the expenses of carrying this Act into execution were an expense necessarily incurred in carrying into effect the provisions of the said Act of the sixth year of the reign of his late Majesty, and the income arising from the lodging-houses in any borough shall be paid to the credit of the borough fund thereof; and the council shall keep distinct accounts of their receipts, payments, credits and liabilities with reference to the execution of this Act, to be called "Lodging-houses Account."

Expenses of carrying this Act into execution in a borough shall be charged upon the borough fund, and income arising to be carried to the same.

Sect. 6. That the board of any such district, being the district of a local board of health, may, if they think fit, determine that this Act shall be adopted for such district, and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district, and this Act shall be carried into execution in such district, in accordance with such provisions and the laws for the time being in force relating to such board.

Any local board of health may adopt the provisions of this Act if they think fit.

Sect. 7. Provided always, that the board shall give not less than twenty-eight nor more than forty-two days' public notice of their intention to take into consideration the propriety of adopting this Act, and of the time and place for holding the meeting at which they will take it into consideration; and if there be presented to the board at that meeting a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to a general district rate made by the board, and requesting the board to postpone such consideration until after the then next yearly day for the election of members of the board, then and in such case such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the board think fit.

On requisition of ratepayers, board to postpone proceedings till after next day for election of members of board.

Sect. 8. That the expenses of carrying this Act into execution in any such district, being the district of a local board of health in which the board shall have resolved to adopt this Act for their district, shall be chargeable upon and paid out of the moneys from time to time carried to the credit of the district fund account of such district, and for that purpose the board may levy with and as part of the general district rate of such district, or by a separate rate to be assessed, levied, paid and recovered in like manner and with the like powers and remedies in all

Expenses of carrying this Act into execution by local board of health shall be charged on the district fund, and income arising to be carried to the same.

*2. Acts for encouraging the Erection of Dwelling-houses.*

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respects as the general rate of such district, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expenses of carrying this Act into execution were an expense necessarily incurred in carrying into effect the provisions of the "Public Health Act, 1848;" and the income arising from the lodging-houses in any such district shall be paid to the credit of the district fund account thereof; and the board shall keep distinct accounts of their receipts, payments, credits and liabilities with reference to the execution of this Act, to be called "The Lodging-houses Account."

Any improvement board may adopt the provisions of this Act if they think fit.

Sect. 9. That the board of any such district, being the place within the limits of any Act for the paving, lighting, watching, draining or otherwise improving of such place, may, if they think fit, determine that this Act shall be adopted for such district, and then and in such case such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in such district, and this Act shall be carried into execution in such district in accordance with such provisions and the laws for the time being in force relating to such board.

On requisition of ratepayers, board to postpone proceedings till after next day for election of members of board.

Sect. 10. Provided always, that the board shall give not less than twenty-eight days' nor more than forty-two days' public notice of their intention to take into consideration the propriety of adopting this Act, and of the time and place for holding the meeting at which they will take it into consideration; and if there be presented to the board at that meeting a memorial in writing, signed by not less than one-tenth in value of the persons liable to be rated to an improvement rate made by the board, and requesting the board to postpone such consideration until after the then next yearly or other day for the election or appointment of members of the board, then and in such case such consideration shall be postponed until after that day, and shall be entered on as soon after that day as the board shall think fit.

If majority of board not elected by ratepayers, consent of ratepayers to be obtained.

Sect. 11. Provided always, that in any case in which the major part in number of the members of the board of any such district are elected or appointed in any manner other than by or with the concurrence of the person liable to be rated to improvement rates made by the board, the board shall not determine that this Act shall be adopted for the district, except with the sanction of the major part in value of the persons so liable present at a meeting specially convened for the purpose by the board, by not less than twenty-eight days' nor more than forty-two days' public notice of the intention of holding such meeting, and of the time and place for holding the same; and such meeting shall be held at such convenient place within the district, and at such convenient time, as the board think fit; and the procedure thereat shall be regulated by the board.

Expenses of carrying this Act into execution by improvement commissioners shall be charged on general improvement rate, and income arising to be carried to the same.

Sect. 12. That the expenses of carrying this Act into execution in any such district, being the place within the limits of any such improvement Act in which the board shall have resolved to adopt this Act for their district, shall be chargeable upon and paid out of the improvement rate of such district, and for that purpose the board may levy with and as part of such improvement rate, or by a separate rate to be assessed, levied, paid and recovered in like manner and with the like powers and remedies in all respects as such improvement rate, such sums of money as shall be from time to time necessary for defraying such expenses, and shall apply the same accordingly as if the expenses of carrying this Act into execution were an expense necessarily incurred in carrying into effect the general provisions of such improvement Act; and the income arising from the lodging-houses in any such district shall be paid to the credit of the improvement rate thereof; and the board shall keep distinct

accounts of their receipts, payments, credits and liabilities with reference to the execution of this Act, to be called "The Lodging-houses Account."

Sect. 13. That in every case in which any such "Improvement Act" contains provisions for the auditing of accounts thereunder, the accounts of the board with respect to this Act shall be audited in accordance with those provisions; and in every case in which any such Improvement Act does not contain any such provisions, the accounts of the board with respect to this Act shall be audited yearly by the poor-law auditor within whose district the district of the board lies (a); and the board shall produce to him their accounts, with sufficient vouchers for all moneys received and paid, and he shall examine such accounts and vouchers, and report thereon to the board, and every such report shall be open at all reasonable times without charge to the inspection of every person liable to be rated to an improvement rate made by the board.

Sect. 14. That, upon the requisition in writing of ten or more ratepayers of any such parish as aforesaid, the churchwardens or other persons to whom it belongs to convene meetings of the vestry in such parish shall convene a meeting of the vestry for the special purpose of determining whether this Act shall be adopted for the parish, after public notice of such vestry, and the place and hour of holding the same, and the special purpose thereof, given in the usual manner in which notice of the meetings of the vestry is given, in each of three successive weeks before the day to be appointed for holding such vestry; and if thereupon it shall be resolved by the vestry that this Act ought to be adopted for the parish, a copy of such resolution, extracted from the minutes of the vestry, and signed by the chairman, shall be sent to one of her Majesty's principal secretaries of state, for his approval, and as soon as such approval shall have been signified in writing under the hand of any such secretary of state such of the provisions of this Act as are applicable in that behalf shall thenceforth take effect and come into operation in the parish: Provided always, that such resolution of the vestry shall not be deemed to be carried unless at least two-thirds in value of the votes given on the question, according to the usual manner of voting at such vestry, shall have been given for such resolution.

Sect. 15. That in such case the vestry shall appoint not less than three nor more than seven persons, being ratepayers of the parish, commissioners for carrying this Act into execution in the parish, of whom one-third, or as nearly as may be one-third (to be determined among themselves), shall go out of office yearly (the year being reckoned from and exclusive of the day of the first appointment of commissioners), but shall be eligible for immediate reappointment.

Sect. 16. That any commissioner may at any time resign his office as a commissioner, on giving seven days' notice in writing of his intention to resign, to the clerk and also to the churchwardens.

Sect. 17. That any vacancies in the commissionership may be filled up by the vestry, when and as the vestry shall think fit, but at the latest at the then next yearly meeting for the appointment of commissioners.

Sect. 18. That the commissioners shall meet at least once in every calendar month, and at such other times as they think fit, at their office, or some other convenient place, public notice of the times and place of meeting being previously given.

2. *Acts for encouraging the Erection of Dwelling-houses.*

Auditing accounts of improvement commissioners with respect to Act.

On the requisition of ten ratepayers, churchwardens, etc., to convene vestry meeting, to determine whether this Act shall be adopted.

If vestry resolve to adopt the Act, a copy of resolution to be sent to secretary of state, etc.

Resolution not deemed to be carried unless two-thirds vote for it.

Where Act adopted, vestry to appoint commissioners for carrying the same into execution.

Resignation of commissioners.

Vacancies to be filled up by vestry.

Meetings of the commissioners.

(a) No power is given to the auditor to disallow or surcharge items in these accounts, nor is any provision made for his remuneration.

*2. Acts for encouraging the Erection of Dwelling-houses.*

Sect. 19. That it shall be at all times competent for any one commissioner, by writing under his hand, to summon, with at least forty-eight hours' notice, the commissioners for any special purpose therein named, and to meet at such time as shall be therein named; and the commissioners may meet accordingly without further notice.

Special meetings of commissioners.

Quorum of meetings of commissioners.

Sect. 20. That at all meetings of the commissioners, any number, not less than one-third of the whole number when more than three commissioners shall have been appointed, and when only three commissioners shall have been appointed, then any number not less than two commissioners, shall be a sufficient number for transacting business and for exercising all the powers of the commissioners.

Commissioners may appoint and remove officers, etc.

Sect. 21. That the commissioners, with the approval of the vestry, may appoint reasonable salaries, wages, and allowances for a clerk and such other officers and servants as shall be necessary for the purposes of this Act, and shall appoint and may remove at pleasure such clerk, officers and servants, and, when necessary, may hire and rent a sufficient office for holding their meetings and transacting their business, and may agree for and pay a reasonable rent for such office.

Minutes of proceedings of commissioners to be entered in books.

Sect. 22. That all orders and proceedings of the commissioners shall be entered in books to be kept by them for that purpose, and shall be signed by the commissioners or any two of them; and all such orders and proceedings so entered and so purporting to be signed, shall be deemed to be original orders and proceedings, and such books may be produced and read as evidence of all such orders and proceedings upon any appeal, trial, information, or other proceeding, civil or criminal, and in any Court of law or equity whatsoever.

Commissioners to keep accounts, which shall be open to inspection.

Sect. 23. That the commissioners shall provide and keep books, in which shall be entered true and regular accounts of all sums of money received and paid for or on account of the purposes of this Act in the parish, and of all liabilities incurred by them for such purposes, and of the several purposes for which such sums of money shall have been paid and such liabilities shall have been incurred; and such books shall at all reasonable times be open to the examination of every commissioner, churchwarden, overseer, and ratepayer, without fee or reward, and they respectively may take copies of or extracts from such books or any part thereof, without paying for the same; and in case the commissioners or any of them, or any of their officers or servants, having the custody of such books, being thereunto reasonably requested, shall refuse to permit or shall not permit any churchwarden, overseer, or ratepayer to examine the same, or take any such copy or extract, every commissioner, officer, or servant so offending shall for every such offence forfeit any sum not exceeding five pounds.

Penalty for refusing to allow inspection.

Auditors to be appointed yearly, who shall examine the accounts and report to vestries.

Sect. 24. That the vestry shall yearly appoint two persons, not being commissioners, to be auditors of the accounts of the commissioners; and at such time in the month of March in every year after the adoption of this Act for the parish as the vestry shall appoint the commissioners shall produce to the auditors their accounts, with sufficient vouchers for all moneys received and paid, and the auditors shall examine such accounts and vouchers, and report thereon to the vestry: Provided always, that if the general accounts of the parish be audited by a poor-law auditor, the accounts of the commissioners shall be audited by such poor-law auditor (a).

Expenses of executing Act in any parish to be paid out of the poor's rate.

Sect. 25. That the expenses of carrying this Act into execution in any parish to such amount as shall be from time to time sanctioned by the

(a) See note (a), ante, 551,

vestry shall be chargeable upon and paid out of the moneys to be raised or applicable for the relief of the poor of the parish: Provided always, that the vestry shall be convened in the manner usual in the parish, and the amount for the time being proposed to be raised or applied for such expenses shall be expressed in the notice convening the vestry.

Sect. 26. That for defraying the expenses so sanctioned the vestry may and shall from time to time order the overseers to levy with and as part of the rate for the relief of the poor of the parish such sums as the vestry shall deem necessary, and the amount thereof shall accordingly be assessed, levied, paid and recovered in like manner, and with the like powers and remedies in all respects as such rate, and shall be paid by the overseers, according to the order of the vestry, to such person as shall be appointed by the commissioners to receive the same, and his receipt shall be a sufficient discharge to the overseers for the same, and shall be allowed accordingly in passing their accounts: Provided always, that in the notices requiring the payment of the rate, the proportion in which the amount to be thereby raised for the purposes of this Act shall bear to the total amount to be thereby raised shall be stated as accurately as circumstances may admit.

Sect. 27. That the money raised for defraying the expenses of carrying this Act into execution, and the income arising from the lodging-houses in the parish, shall be applied by the commissioners in or towards defraying the expenses of carrying this Act into execution in the parish; and whenever, after repayment of all moneys borrowed for the purpose of carrying this Act into execution in the parish, and the interest thereof, and after satisfying all the liabilities of the commissioners with reference to the execution of this Act in the parish, and providing such a balance as shall be deemed by the commissioners sufficient to meet their probable liabilities during the then next year, there shall be at the time of holding the meeting of the vestry at which the yearly report of the auditors shall be produced any surplus money at the disposal of the commissioners, they shall pay the same to the overseers, in aid of the rate for the relief of the poor of the parish.

Sect. 28. That the vestries of any two or more neighbouring parishes having, according to the then last census, an aggregate population of not less than ten thousand may, for the purpose of concurring in carrying this Act into execution, respectively adopt this Act in like manner as if the population of each of those parishes were, according to the then last census, not less than ten thousand; and the vestries of any two or more neighbouring parishes which shall have respectively adopted this Act may concur in carrying this Act into execution in such parishes, in such manner, not inconsistent with the provisions of this Act, and for such time, as they shall mutually agree; and for that purpose it may, with the approval of such secretary of state, be agreed on between such vestries that any lodging-houses shall be erected and made in any one of such parishes, to be vested in the commissioners thereof, and that the expenses of carrying this Act into execution with reference to the same shall be borne by such parishes in such proportions as such vestries shall mutually agree, and the proportion for each of such parishes of such expenses shall be chargeable upon and paid out of the moneys to be raised for the relief of the poor of the same respective parish accordingly: and according and subject to the terms which shall have been so agreed on, the commissioners appointed for each of such parishes shall, in the management of the said lodging-houses, form one body of commissioners, and shall act accordingly in the execution of this Act; and the accounts and vouchers of such commissioners shall be examined and reported on by the auditors of each of such parishes, and the surplus money at the disposal as aforesaid of such commissioners shall be paid to the overseers of such parishes respectively, in the

2. *Acts for encouraging the Erection of Dwelling-houses.*

Overseers to levy as part of the poor's rate such sums as vestry shall deem necessary to pay expenses.

Moneys raised, and the income arising from lodging-houses in the parish, to be applied towards defraying expenses.

Vestries of two or more parishes may concur in carrying this Act into execution, subject to the approval of secretary of state.

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Incorporation of commissioners.

Acts of commissioners to be good notwithstanding informalities.

Councils, etc., may borrow money for the purposes of the Act, with the approval of the Treasury.

The public works loan commissioners may advance money for the purposes of this Act.

Certain provisions of 8 & 9 Vict. c. 16, incorporated with this Act.

same proportions as those in which such parishes shall be liable to such expenses.

Sect. 29. That for the more easy execution of the purposes of this Act the commissioners of every such parish shall be a body corporate, with perpetual succession, which shall not be deemed to be interrupted by any partial or total vacancy from time to time in their office, by the name of "The Commissioners for Lodging-houses in the Parish of ( ), in the County of ( )," and by that name may sue and be sued in all Courts, and before all justices and others, and may have and use a common seal, and by that name may take, hold, and convey any lands vested in them for the purposes of this Act.

Sect. 30. That all acts and proceedings of any person in possession of the office of such commissioner, and acting in good faith as such commissioner, shall, notwithstanding his disqualification or want of qualification for, or any defect or irregularity in, or in any way concerning his appointment to such office, be as valid and effectual as if he were duly qualified, or there had not been any such defect or irregularity.

Sect. 31. That for carrying this Act into execution in any borough, district, or parish respectively, the council, with the approval of the commissioners of her Majesty's treasury, and also with the approval of the general board of health, and the board, with the approval of the commissioners of her Majesty's treasury, and also with the approval of the general board of health, and the commissioners, with the sanction of the vestry, and also with the approval of the commissioners of her Majesty's treasury, and also with the approval of the general board of health, may from time to time borrow, at interest, on the security of a mortgage, as the case may be, of the borough fund, or of the general district rates, or of the improvement rates, or of the rates for the relief of the poor of the parish, the money which may be by them respectively required, and shall apply the moneys so borrowed accordingly.

Sect. 32. That the commissioners for carrying into execution an Act passed in the tenth year of the reign of her Majesty, intituled "An Act to authorize the Advance of Money under the Consolidated Fund for carrying on Public Works and Fisheries and Employment of the Poor," may from time to time make to the council of any such borough or to any board or to the commissioners of any such parish respectively, for the purposes of this Act, any loan, under the provisions of the recited Act, or the several Acts therein recited or referred to, upon security of the borough fund, or the general district rates, or the improvement rates, or the rates for the relief of the poor of the parish, as the case may be.

Sect. 33. That the provisions of the "Companies Clauses Consolidation Act, 1845," with respect to the borrowing of money by any company on mortgage, and the provisions of the same Act with respect to the accountability of the officers of the company, and the provisions of the same Act with respect to the making of bye-laws, subject to the provision hereinafter contained, and the provisions of the same Act with respect to the recovery of damages not specially provided for, and penalties, so far as such provisions may respectively be applicable to the purposes of this Act, shall be respectively incorporated with this Act; and the expressions in such provisions applicable to the company and the directors shall apply, as regards a borough, to the council, and as regards a parish, to the commissioners; and all deeds and writings which under such provisions are required or directed to be made or executed under the common seal of the company shall, in the application of such provisions to this Act, be deemed to be required or directed to be made or executed, as regards a borough, under the common seal of the mayor, aldermen and burgesses, and, as regards a parish, under the common seal of the

commissioners; and so much of such provisions as are applicable to the secretary of the company shall apply to the clerk; and in such of the said provisions as relate to the inspection of accounts, as regards a borough, the burgesses, and, as regards a parish, the ratepayers, shall have the privileges of shareholders (a).

Sect. 34. That the "Lands Clauses Consolidation Act, 1845," shall be incorporated with this Act: Provided always, that the council, the board, and the commissioners respectively shall not purchase or take any lands otherwise than by agreement.

2. *Acts for encouraging the Erection of Dwelling-houses.*

Provisions of 8 & 9 Vict. c. 18, incorporated with this Act.

Sect. 35. That in any such borough the council, with the approval of the commissioners of her Majesty's treasury, may from time to time appropriate for the purposes of this Act in the borough any lands vested in the mayor, aldermen and burgesses; and in any such district the board, with the approval of the general board of health, may from time to time appropriate for the purposes of this Act in the district any lands vested in the board or at the disposal of the board; and in any such parish the commissioners appointed under this Act, with the approval of the vestry and of the guardians of the poor of the parish (if any), and of the poor-law board, may from time to time appropriate for the purposes of this Act in the parish any lands vested in such guardians, or in the churchwardens, or in the churchwardens and overseers of the parish, or in any feoffees, trustees, or others, for the general benefit of the parish; and in any such parish the commissioners, and in any such borough the council, and in any such district the board, may from time to time, with the like respective approval, contract for the purchasing or renting of any lands necessary for the purposes of this Act; and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the board in the case of a district, or in the commissioners in the case of a parish.

In boroughs the council may appropriate, with consent of the Treasury, lands vested in the mayor, etc.;

In parishes the commissioners may, with approval of the vestry, etc., appropriate lands belonging to parish;

or contract for purchase of the same.

Sect. 36. That the council and board and commissioners respectively may from time to time, on any lands so appropriated, purchased or rented, or contracted so to be, respectively, erect any buildings suitable for lodging-houses for the labouring classes, and convert any buildings into lodging-houses for the labouring classes, and may from time to time alter, enlarge, repair, and improve the same respectively, and fit up, furnish, and supply the same respectively with all requisite furniture, fittings, and conveniences.

Councils and commissioners may erect lodging-houses.

Sect. 37. That the council and board and commissioners respectively may from time to time enter into any contract with any persons or companies for building and making, and for altering, enlarging, repairing, and improving such lodging-houses, and for supplying the same respectively with water, and for lighting the same respectively, and for fitting up the same respectively, and for furnishing any materials and things, and for executing and doing any other works and things necessary for the purposes of this Act, which contracts respectively shall specify the several works and things to be executed, furnished, and done, and the prices to be paid for the same, and the times when the works and things are to be executed, furnished, and done, and the penalties to be suffered in cases of nonperformance; and all such contracts, or true copies thereof, shall be entered in the books to be kept for that purpose: Provided always, that a contract above the value or sum of one hundred pounds shall not be entered into by the council or the board or the commissioners for the purposes of this Act, unless previous to the making thereof fourteen days' notice shall be given in one or more of the public newspapers published in the county in which the borough or district or parish shall be situated, expressing the intention of entering into such

Councils and commissioners may enter into contracts for the purposes of this Act.

No contract above £100 to be entered into without notice.



*2. Acts for encouraging the Erection of Dwelling-houses.*

Councils or commissioners may purchase existing lodging-houses.

contract, in order that any person willing to undertake the same may make proposals for that purpose, to be offered to the council or board or commissioners at a certain time and place in such notice to be mentioned; but it shall not be incumbent on the council or board or commissioners to accept any of the proposals so offered.

Sect. 38. That the council of any such borough, and the board of any such district, and the commissioners, with such respective approval as is by this Act required with respect to the purchasing or renting in any other case of any lands necessary for the purposes of this Act, may, if they shall think fit, contract for the purchase or lease of any lodging-houses for the labouring classes already or hereafter to be built and provided in any such borough or district or parish, and appropriate the same to the purposes of this Act, with such additions or alterations as they shall respectively deem necessary; and the trustees of any lodging-houses for the labouring classes which have been already or may hereafter be provided in any such borough or district or parish, by private subscriptions or otherwise, may, with the consent of the council of any such borough, or with the consent of the board of any such district, or with the consent of the commissioners, and with the like respective approval, and with the consent of a majority of the committee or other persons by whom they were appointed trustees, sell or lease the said lodging-houses to the said council or board or commissioners respectively, or make over to them the management of such lodging-houses; and in all such cases the lodging-houses so purchased or leased, or of which the management has been so made over, shall be deemed to be within the provisions of this Act, as fully as if they had been built or provided by the council or board or commissioners, and the property therein shall be vested in the mayor, aldermen, and burgesses in the case of a borough, or in the board in the case of a district, or in the commissioners in the case of a parish.

Power to water and gas companies to supply water and gas to lodging-houses.

Sect. 39. That any commissioners of waterworks, trustees of waterworks, water companies, gas companies, and other corporations, bodies, and persons having the management of any waterworks, reservoirs, wells, springs, and streams of water and gasworks respectively, may, in their discretion, grant and furnish supplies of water or gas for such lodging-houses, either without charge or on such other favourable terms as they shall think fit.

Councillors and commissioners not to be personally liable.

Sect. 40. That anything in this Act contained shall not render any member of the council of any borough, or any member of any such board, or any commissioner, personally, or any of their lands, goods, chattels, or moneys (other than such lands, goods, chattels, or moneys as may be vested in or under the management or control of the council or board or commissioners respectively in pursuance of this Act), liable to the payment of any sum of money as or by way of compensation or satisfaction for or in respect of anything done or suffered in due pursuance of this Act.

Persons may appeal against orders of councils and commissioners.

Sect. 41. That every person who shall feel aggrieved by any bye-law, order, direction, or appointment of or by the council or board or commissioners, shall have the like power of appeal to the general quarter sessions as under the provisions of the "Companies Clauses Consolidation Act, 1845," incorporated with this Act, he might have, if feeling aggrieved by any determination of any justice with respect to any penalty.

Council, etc., empowered to make sale and exchange of lands, with consent.

Sect. 42. That the council, with the approval of the commissioners of her Majesty's treasury, and the board, with the approval of the general board of health, and the commissioners appointed under this Act, with the approval of the vestry and of the commissioners of her Majesty's

treasury respectively, may from time to time make sale and dispose of any lands vested in the mayor, aldermen, and burgesses, or in the board, or in the commissioners, respectively, for the purposes of this Act, and apply the proceeds, or a sufficient part thereof, in or towards the purchase of other lands better adapted for such purposes, and may, with the like approval, exchange any lands so vested, and either with or without paying or receiving any money for equality of exchange, for any other lands better adapted for such purposes, and the mayor, aldermen, and burgesses, or the board, or the commissioners, may convey the lands so sold or exchanged accordingly.

Sect. 43. That whenever any lodging-houses which shall have been for seven years or upwards established under the authority of this Act shall be determined by the council, or by the board, or by the vestry, in accordance with a previous recommendation of the commissioners, to be unnecessary or too expensive to be kept up, the council or commissioners, with the approval of the commissioners of her Majesty's treasury, or the board, with the approval of the general board of health, may sell the same for the best price that can reasonably be obtained for the same, and the mayor, aldermen, and burgesses, or the board, or the commissioners, shall convey the same accordingly, and the purchase money shall be paid to such person as the council or board or commissioners shall appoint, and his receipt shall be a sufficient discharge for the same, and the net proceeds of such sale shall be applied in the first instance in or towards payment or satisfaction of all the debts, liabilities, and engagements whatsoever, with respect to the purposes of this Act, of the council, the board, or the commissioners, and the surplus, if any, of such net proceeds paid to the credit of the borough fund, or of the general district rate, or of the improvement rate, or of the rate for the relief of the poor of the parish.

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When lodging-houses are considered too expensive, they may, with approval of Treasury, be sold, and proceeds of sale carried to borough fund or poor's rate.

Sect. 44. Provided always, that whenever by reason of the sale of all the lodging-houses provided under this Act for a parish, and the application as by this Act required of the net proceeds of such sale, and the performance of all other the duties under this Act of the commissioners for the parish, or by any other reason, it becomes needless for the commissioners for a parish to continue to be a corporation, such commissioners shall thereupon cease to be a corporation, and their office as commissioners for the parish shall thereupon cease, and this Act shall thereupon cease to be in force in the parish, but nevertheless this Act may thereafter be adopted for the parish.

Commissioners to cease to be a corporation when their duties have ceased.

Sect. 45. That the general management, regulation, and control of the lodging-houses established under this Act shall, subject to the provisions of this Act, be, as to any borough, vested in and exercised by the council, and as to any district vested in and exercised by the board, and as to any parish vested in and exercised by the commissioners.

Management to be vested in council and parish commissioners.

By the 29 Vict. c. 28 (May 18th, 1866), after reciting that by the "Labouring Classes Lodging-houses Act, 1851," *ante*, 547, powers were vested in certain local authorities for the purpose of facilitating the erection of lodging-houses for the labouring classes, and that it is desirable that further provision should be made for facilitating and encouraging the erection of dwellings for the labouring classes in populous places, it is enacted as follows:—

Sect. 1. This Act may be cited as the "Labouring Classes Dwelling-houses Act, 1866."

Short title.

Sect. 2. This Act shall be deemed to be incorporated with and shall be taken as part of the "Labouring Classes Lodging-houses Act, 1851," and the two Acts shall be read and construed together as if they were one Act.

Act incorporated with 14 & 15 Vict. c. 34.

Sect. 3. All the clauses, powers, authorities, provisoes, enactments,

Application of

*2. Acts for encouraging the Erection of Dwelling-houses.*

24 & 25 Vict.  
c. 80, to this Act.

Authorities and persons to whom loans may be made.

18 & 19 Vict.  
c. 121.

Rules and Regulations.

directions, regulations, restrictions, privileges, priorities, advantages, penalties, and forfeitures contained in and conferred and imposed by the Act of the session of the twenty-fourth and twenty-fifth years of her Majesty's reign, chapter eighty ("Public Works and Harbours Act"), and the Acts therein referred to, or any of them, so far as the same can be made applicable and are not varied by this Act, shall be taken to extend to this Act, and to everything to be done in pursuance of this Act, and as if the same were herein repeated and set forth.

Sect. 4. For the purpose hereinafter mentioned, the public works loan commissioners, as defined by the said Act of the twenty-fourth and twenty-fifth years of her Majesty, may out of the funds for the time being at their disposal from time to time advance on loan to any such local or other authority as hereinafter mentioned, namely,

Any council, board, or commissioners authorized to carry into execution the "Labouring Classes Lodging-houses Act, 1851 ;"

Any local or other authority invested with powers of town or local government and rating under any public general or any local Act, by whatever name such local or other authority may be called ;

Any local authority acting under the "Nuisances Removal Act, 1855," or any Act or Acts amending the same ;

or to any such body or proprietor as hereinafter mentioned, namely,

Any railway company, or dock or harbour company, or any other company, society, or association established for the purposes of this Act or for trading or manufacturing purposes ;

Any private person entitled to any land for an estate in fee simple, or for any term of years absolute, whereof not less than fifty years shall for the time being remain unexpired ;

And any such local or other authority, or any such body or proprietor, may from time to time borrow from the public works loan commissioners such money as may be required for the purpose of this Act, subject and according to the following provisions :

Objects of loans.

1. Such advance on loan shall be made for the purpose of assisting in the purchase of land and buildings, or in the erection, alteration, and adaptation of buildings to be used as dwellings for the labouring classes, and in providing all conveniences which may be deemed proper in connection with such dwellings :

2. Any such advance may be made whether the local or other authority or body or proprietor receiving the same has or has not the power to borrow on mortgage or otherwise, independently of this Act ; but nothing in this Act contained shall repeal or alter any regulation, statutory or otherwise, whereby any company may be restricted from borrowing until a definite portion of capital is subscribed for, taken, or paid up :

3. No sum shall be advanced without the approval of the commissioners of her Majesty's treasury of the borrowing thereof, signified by some writing under the hand of one of their secretaries or assistant secretaries :

4. It shall be lawful for the said commissioners of her Majesty's treasury to make such rules and regulations as they shall from time to time think proper with respect to applications for advances under this Act, and the terms and conditions upon which such advances are to be made, and to issue such instructions and forms as they may think proper for the guidance of and observance by persons applying for or receiving loans, or executing works, or rendering accounts of moneys expended under this Act ; or regarding the class of dwellings towards the providing of which such loans may be made, and the adaptation thereof to the purposes intended, and as

to the mode of providing for their maintenance, repair, and insurance :

5. The period for the repayment of the sums advanced shall not exceed forty years :
6. The repayment of the money advanced, with interest thereon at such rate as shall be agreed upon, but not at a less rate than four pounds per centum per annum, shall be secured as follows ; namely, in the case of an advance to any such local or other authority as aforesaid, either by a mortgage solely of the rates leviable by such authority, or by such other mortgage as hereinafter mentioned, or by both ; and in any other case by a mortgage of the estate or interest of any such local or other authority, or of any such body or proprietor as aforesaid, in the land or dwellings for the purposes of which the advance is made ; and in the case of an advance to a company any part of whose capital remains uncalled up or unpaid, by a mortgage also of all capital so remaining uncalled up or unpaid ; and any such mortgage as aforesaid may be taken either alone or together with any other security which may be agreed upon ; but it shall not be incumbent on the public works loan commissioners to require any other security :
7. No money shall be advanced on mortgage of any land or dwellings solely, unless the estate therein proposed to be mortgaged shall be either an estate in fee simple or an estate for a term of years absolute, whereof not less than fifty years shall be unexpired at the date of the advance :
8. The money advanced on the security of a mortgage of any land or dwellings solely shall not exceed one moiety of the value, to be ascertained to the satisfaction of the Public Works Loan Commissioners, of the estate or interest in such land or dwellings proposed to be mortgaged ; but advances may be made by instalments from time to time as the building of the dwellings on the land mortgaged progresses, so that the total advance do not at any time exceed the amount aforesaid ; and a mortgage may be accordingly made to secure such advances so to be made from time to time :
9. For the purposes of this Act every such local or other authority or body as aforesaid is hereby authorized to purchase, take, and hold land, and if not already a body corporate shall, for the purpose of holding such land under this Act, and of suing and being sued in respect thereof, be nevertheless deemed a body corporate with perpetual succession.

By the "Labouring Classes Dwelling-houses Act, 1867" (30 Viet. c. 28), s. 2, the words "land or dwellings for the purposes of which the advance is made" in the above section, shall be construed to include any land, buildings, or premises held together with and for the same estate and interest as the lands, buildings, or premises upon which the money advanced is to be expended under the provisions of the said Acts respectively.

By sect. 3 of the same Act, in the case of an advance under the provisions of the 29 Viet. c. 28, to a company or society, any part of whose capital remains uncalled up or unpaid, it shall be lawful, in England for the public works loan commissioners to dispense with a mortgage of such capital remaining uncalled up or unpaid, or of such part thereof as they may think fit.

By the 29 Viet. c. 28, s. 5, "The Land Clauses Consolidation Act, 1845," and the "Lands Clauses Consolidation (Scotland) Act, 1845," and any Act amending the same, except the clauses in the said Acts respectively with respect to the purchase and taking of lands otherwise than by agreement, shall be incorporated with this Act, and for the purposes of

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Currency of Loans.

In case of advances to company, part of whose capital is unpaid, loan commissioners may dispense with mortgage.

Incorporation of 8 & 9 Viet. cc. 18 and 19, with this Act.

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Incorporation of 10 & 11 Vict. c. 16, with this Act.

those Acts this Act shall be deemed the special Act; and any such local or other authority or body or proprietor as aforesaid exercising the powers of this Act shall be deemed the promoters of the undertaking.

Sect. 6. The clauses of the "Commissioners Clauses Act, 1847," with respect to the mortgages to be executed by the commissioners, except so far as the same may be inconsistent with the provisions of the said Act of the twenty-fourth and twenty-fifth years of her Majesty, chapter eighty, or of any of the Acts therein recited, shall be incorporated with this Act; and in the construction of this Act and of the said incorporated clauses, this Act shall be deemed the special Act; and the local or other authority, or the body or proprietor, to whom the loan is made, shall be deemed to be the commissioners; but the said incorporated clauses shall not, so far as they prescribe the manner of executing mortgages, or so far as they require a register to be kept of mortgages, or transfers of mortgages, apply to any mortgage made under this Act by any proprietor being a private person; and all mortgages executed by any proprietor being a private person shall be executed in the usual manner.

Special powers of mortgagees.

Sect. 7. Every mortgage under this Act shall confer on the mortgagee thereunder for the time being all the rights, powers, and privileges conferred on mortgagees by part 2 of the 23 & 24 Vict. c. 145; and any such mortgage may confer on the mortgagee such further powers of sale and other powers, and may also contain all such covenants and provisions, as may be agreed upon; and nothing contained in this Act or in any clauses incorporated in the "Labouring Classes Lodging-houses Act, 1851," or in this Act, shall be deemed to limit or prevent the enforcement of any rights or remedies which, at law or in equity or by statute, may be otherwise incidental to any such mortgage, either under the Acts relating to the public works loan commissioners, or otherwise.

Powers to companies.

Sect. 8. Any railway company, or dock or harbour company, or any other company, society, or association, established for trading or manufacturing purposes in the course of whose business or in the discharge of whose duties persons of the labouring class are employed, may and are hereby (notwithstanding any Act of Parliament, or charter, or any rule of law or equity to the contrary), authorized at any time or from time to time to erect, either on their own land or on any other land (which they are hereby authorized to purchase and hold for the purpose, and to pay for out of any funds at their disposal), dwellings for the accommodation of all or any of the persons of the labouring class employed by them, and shall have all the like powers of borrowing and other powers which are hereinbefore conferred on any such body or proprietor as hereinbefore mentioned.

Rules to be laid before Parliament.

Sect. 9. All rules and regulations made by the lords commissioners of the treasury under the provisions of this Act shall be laid before Parliament.

Extent of Act.

Sect. 10. This Act shall not extend to Ireland.

By the 18 & 19 Vict. c. 132 (14th August, 1855), for facilitating the erection of dwelling-houses for the labouring classes, it is enacted as follows:—

Short title.

Sect. 1. This Act may for all purposes be cited as "The Labourers' Dwellings Act, 1855."

*Constitution of Company.*

Power to form company.

Sect. 2. Any number of persons not less than six may, by subscribing articles of association or a schedule thereto, form themselves into a company for the purposes hereinafter mentioned: the articles shall be in the form set forth in the schedule thereto, or as near thereto as circumstances

permit: there shall be set opposite to the name of each subscriber the sum subscribed for by him in the capital of the company, and his subscription shall be deemed to imply a covenant on the part of himself, his heirs, executors, and administrators, to pay to the company the amount so subscribed for.

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Sect. 3. The articles shall be registered by the registrar of joint-stock companies, who shall charge in respect of such registration such fees as may from time to time be directed by the lords of the committee of Privy Council appointed for the consideration of matters relating to trade and plantations, hereinafter called the Board of Trade; and upon such registration being made the subscribers, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name prescribed in the articles of association, having a perpetual succession and a common seal; but no such registration shall be made until it is proved to the satisfaction of the said registrar that three-fourths of the proposed capital has been subscribed for, and that ten per centum upon such capital has been paid up.

Registration of articles.

Sect. 4. The said registrar shall grant a certificate stating the date of the incorporation of the company, and such certificate shall in all cases be *prima facie* evidence of the fact of such incorporation.

Certificate of incorporation.

Sect. 5. "The Companies Clauses Consolidation Act, 1845," shall be incorporated into and form part of this Act, with the exception of the provisions relating to the recovery of damages, and to the provision to be made for affording access to the special Act; and in the construction of the said Companies Clauses Act the articles of association shall be deemed to be the special Act, and the date of the incorporation of the company, as certified in manner aforesaid, shall be deemed to be "the time of the passing of the special Act;" and whenever the term "prescribed" is used in this or in the said incorporated Act, it shall mean "prescribed by the articles of association."

8 & 9 Vict. c. 16, incorporated with this Act.

#### *Rights and Obligations of Company.*

Sect. 6. Every company incorporated under this Act, and hereinafter referred to as "the company," shall be established for the purpose of providing dwellings for the labouring classes, with or without private gardens, or with or without common gardens or places of common recreation for the use of the inmates of such dwellings, and for no other purpose whatever; and for the above purpose the company shall have power to accept grants and leases of and to purchase and hold land, to erect thereon dwellings for the labouring classes, and to let such dwellings to lodgers by the week or month, or to demise the same to lessees for any estate or interest not greater than a term of twenty-one years, upon such terms of remuneration as they think fit; subject to this proviso, that the company shall not be entitled to hold at any one time more than ten acres of land, except with the licence of the Committee of privy council for trade.

Purpose of company.

Sect. 7. The following regulations shall be made respecting any dwellings provided by the company; that is to say,—

Regulations as to dwellings.

1. All such dwellings shall, as respects drainage, ventilation, supply of water, and necessary conveniences, be constructed and provided in such manner as may be approved by the general board of health, and shall be maintained by the company in good and sufficient repair;
2. Any person appointed by the general board of health may at all reasonable times inspect any such dwellings as aforesaid.

Sect. 8. The following matters and things may be prescribed by the

Permissive rights of the company.

*2. Acts for encouraging the Erection of Dwelling-houses.*

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articles of association, and if so prescribed, but not otherwise, shall be binding; that is to say,—

1. That the capital of the company may, with the approval of the Board of Trade, and subject to such condition as they may impose, be increased by the issue of a prescribed number of shares, and of a prescribed amount:
2. That no premium is to be taken in respect of any lease granted by the company:
3. That the interest granted to any lessee is not to exceed the prescribed term, such term being less than twenty-one years:
4. That the interest of a lessee is not to be disposed of without the consent of the directors:

But no power hereby given shall be exercised in such manner as to prejudice any right under any subsisting lease or contract for a lease.

Power to mortgage given in certain cases.

Sect. 9. In cases where it is prescribed by the articles of association that the dwellings belonging to the company are to be let only to lodgers by the week or month and not for any greater interval, the company may, as soon as half the subscribed capital is paid up, borrow on the security of their property to the prescribed amount, such amount not to exceed one-third of such subscribed capital; but no mortgagee shall have power to eject any tenant before the expiration of his tenancy; and in no other case shall the company have power to borrow money.

Rules as to demises by the company.

Sect. 10. The following rules shall be observed with respect to demises and letting made by the company:

1. The dwellings provided by the company, with the private gardens (if any) appurtenant thereto, shall be divided into such parcels as may be conveniently held in distinct occupations:
2. The parcels shall be numbered in arithmetical progression, beginning with the figure one, each parcel being distinguished by a separate number:
3. The interests of the lessees, other than monthly or weekly tenants, in the property of the company, shall be deemed to be shares in a capital consisting of the dwelling-houses of the company, with their appurtenances; and in all cases where such interests are not restricted to the original lessee, the transfer or transmission of such interests shall take place in manner in which the transfer or transmission of shares takes place in pursuance of the said "Companies Clauses Consolidation Act, 1845," or as near thereto as circumstances admit; and the clauses of such last-mentioned Act with respect to the transfer or transmission of shares shall, with the necessary alterations, be held to apply to the transfer or transmission of the interests of any such lessees as aforesaid.

Power to company to purchase interests of lessees.

Sect. 11. The company may purchase the interest of any registered lessee, and upon such purchase being made, such interest shall be deemed to be extinguished, and the company may demise the premises so purchased in the same manner as if no previous lease thereof had ever before been made.

Penalty on misappropriation of funds.

Sect. 12. If any funds of the company are advanced to any person by way of loan, or are with a view of gaining profit appropriated to any purpose other than the purpose for which the company is hereby declared to be established, every director of the company shall, in addition to any other liabilities he may be under to replace such funds, be liable, at the suit of any shareholder or other person, whether implicated or not in such loan or misappropriation, to pay to such shareholder or other person, to be applied by him to his own use, in respect of each such advance or misappropriation, a sum by way of penalty not greater

in amount than the sum so advanced or misappropriated, and not less than half such sum.

Sect. 13. If any dwelling belonging to the company is insufficiently drained or ventilated, or insufficiently supplied with water or necessary conveniences, or is in a bad state of repair, the general board of health may, by order left at any office of the company, or served on any director of the company, require the company, within a reasonable time, to be specified in such order, sufficiently to drain, ventilate, and supply with water and necessary conveniences, or put in a good state of repair, such dwelling; and if default is made in compliance with the requisitions of such notice, the company shall incur a penalty not exceeding five pounds for every day during which such default continues; and it shall be lawful for any justices by whom such penalty is imposed, if they think fit, to order the whole or any part thereof to be laid out in executing the works in respect of which the penalty is incurred; and in addition to the above remedy the said general board may themselves do the works required by such notice, and recover from the company in a summary manner the expenses of so doing the same; but any order made by the general board in pursuance of this section may be appealed against, and, on application by motion, be set aside or otherwise modified by any of her Majesty's superior courts of law at Westminster.

Sect. 14. If any person obstructs any inspector of the general board of health in the inspection of any dwelling belonging to the company, he shall for each offence incur a penalty not exceeding five pounds.

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Penalty in case dwellings are not sufficiently drained, etc.

Penalty on obstructing inspector.

#### Miscellaneous.

Sect. 15. The provisions of the "Lands Clauses Consolidation Act, 1845," with reference to the purchase of lands by agreement, shall be incorporated with this Act, and shall apply to the purchase of land by the company in pursuance of this Act.

Certain provisions of 8 & 9 Vict. c. 18 incorporated with this Act.

Sect. 16. All penalties imposed by this Act, or by any bye-laws made in pursuance of this Act or of any Act incorporated herewith, and all sums of money hereby directed to be recovered in a summary manner, may be recovered in a summary manner before two justices, as directed by the 11 & 12 Vict. c. 43.

Recovery of Penalties.

Sect. 17. This Act shall not extend to Scotland.

Extent of Act.

#### SCHEDULE.

<i>Articles of Association of the</i>	<i>Company.</i>	
1. <i>The name of the company shall be the</i>	<i>company.</i>	
2. <i>The capital of the company shall be of pounds each.</i>	<i>pounds divided into shares</i>	Sect. 6.
3. <i>The first ordinary meeting of the company shall be held after the date of the incorporation of the company.</i>	<i>days</i>	Sect. 66.
4. <i>The number of directors shall be such number to any number not less than it to any number not exceeding</i>	<i>; but the company may reduce , and may increase</i>	Sect. 82.
5. <i>The first directors of the company shall be the following persons; that is to say,*</i>		Sect. 83.

\* Insert names of Directors.

N.B.—The references in the margin refer to the sections of the "Companies Clauses Consolidation Act, 1845."

### III. Acts for Improving Artisans' and Labourers' Dwellings.

By the 31 & 32 Vict. c. 130, which by sect. 1 may be cited as the "Artisans' and Labourers' Dwellings Act, 1868," after reciting that it is



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expedient to make provision for taking down or improving dwellings occupied by working men and their families which are unfit for human habitation, and for the building and maintenance of better dwellings for such persons instead thereof, it is enacted as follows :—

Application of Act, and definition of "local authority," "local rate," and "clerk of local authority."

Sect. 2. This Act shall apply only to the places named in the first column of table (A) in the first schedule annexed hereto; and "local authority," "local rate," and "clerk of local authority" shall mean "the bodies of persons," "rate," and "officer" in that table in that behalf mentioned; and the said table shall be of the same force as if it were enacted in the body of this Act: Provided always, that this Act shall not apply to any city, borough, town, or place that would otherwise be included within the said table, the population whereof does not according to the census for the time being in force amount to the number of ten thousand persons.

Interpretation of terms:

Sect. 3. The following words and expressions have in this Act the following meanings, unless excluded by the subject or context; that is to say,—

"Street" and "Square:"

The word "street" includes any court, alley, street, square, or row of houses:

"Premises:"

The word "premises" means any dwelling-house or inhabited building, and the site thereof, with the yard, garden, outhouses, and appurtenances belonging thereto or usually enjoyed therewith:

"Owner:"

The expression "owner," in addition to the definition given by the "Lands Clauses Act," shall include all lessees or mortgagees of any premises required to be dealt with under this Act, except persons holding or entitled to the rents and profits of such premises for a term of years, of which twenty-one years do not remain unexpired:

"Person:"

"Person" shall include a body of persons, corporate or unincorporate:

"Quarter sessions:"

"Quarter sessions" shall include general sessions, and in Ireland shall mean, in towns and boroughs, where there are separate quarter sessions, the quarter sessions of said boroughs and towns, and in boroughs where there are no separate quarter sessions, the quarter sessions of the divisions of the courts in which such towns or boroughs shall be situate:

"Officer of health:"

"Officer of health" shall mean and include medical officer of health, sanitary inspector, or any statutory officer performing the duties which a medical officer or sanitary inspector performs under or by virtue of any Act of Parliament:

"Local officer," etc.

In all cases in which the name of a local authority, local court, magistrate, or officer having any local jurisdiction in respect of their or his office is referred to, without mention of the locality to which the jurisdiction extends, such reference is to be understood to indicate the local authority, local court, magistrate, or officer having jurisdiction in that place within which are situate the premises or other subject matter or any part thereof to which such reference applies:

"The metropolis:"

"The metropolis" shall not include the city of London or the liberties thereof, but shall include all other parishes or places within the jurisdiction of the metropolitan board of works:

"Borough" in England.

"Borough" in England shall mean any place for the time being subject to the 5 & 6 Will. 4, c. 76.

As to appointment of officers of health and payment of salaries.

Sect. 4. If in any place to which this Act applies there is no officer of health within the meaning of this Act, the local authority, with the approval of one of her Majesty's principal secretaries of state, shall forthwith appoint such an officer for such period as shall be necessary,

shall assign him his duties, and pay him such salary or emolument out of the local rate as they, with such approval as aforesaid, shall think fit. The local authority, with the like approval, may from time to time remove any officer appointed under this section, and in manner aforesaid appoint another officer in his place.

Sect. 5. If in any place to which this Act applies the officer of health find that any premises therein are in a condition or state dangerous to health so as to be unfit for human habitation, he shall report the same in manner hereinafter provided to the local authority.

Sect. 6. Every report made under this Act by the officer of health shall be made in writing and delivered to the clerk of the local authority, and the local authority shall refer such report to a surveyor or engineer, who shall thereupon consider the report so furnished to him, and report to the local authority what is the cause of the evil so reported on, and the remedy thereof; and if such evil is occasioned by defects in any premises, whether the same can be remedied by structural alterations and improvements or otherwise, or whether such premises, or any and what part thereof, ought to be demolished.

Sect. 7. Upon receipt of the report of the surveyor and engineer, the local authority shall cause copies of both the reports to be given to the owner, with notice of the time and place appointed by the local authority for the consideration thereof, and such owner shall be at liberty to attend and to state his objections (if any) to such reports, or either of them, including therein any objection that the necessary works ought to be done by or at the expense of some other person or persons, or at the expense of the parish or district in which the premises are situate; and on such objections the local authority shall make an order in writing, signed by the clerk of such local authority, which shall be subject to appeal in manner hereinafter mentioned; and if such objections are overruled, the local authority, if they deem it necessary, shall cause to be prepared a plan and specification of the works (if any), and an estimate of the cost of such works, required to be executed.

Sect. 8. The clerk of the local authority shall thereupon forthwith give notice to the owner of the premises, informing him that a plan and specification and estimate of the cost of such works as are required in reference thereto have been prepared, and that such plan and specification and estimate may, if such owner think fit, be inspected and transcribed by him or his agent at the office of the clerk of the local authority without charge; and any such owner may at any time within three weeks after the receipt of such notice state in writing to the clerk of the local authority any objection which he may entertain to the said plan, specification, and estimate, or any of them, and may attend at a time and place to be appointed for such purpose by the local authority to support such objections; and the local authority shall thereupon make such order in relation thereto as they may think fit; and if they decide that any alteration is to be made in the said plan, specification, and estimate, the local authority shall cause such alteration to be made accordingly, and the plan and specification and estimate so amended shall be the plan and specification and estimate according to which the works shall be executed.

Sect. 9. Any person aggrieved by any order of the local authority, or his agent, may appeal against the same to the Court of quarter sessions held next after the making of the said order, but the appellant shall not be heard in support of the appeal unless, within one calendar month after the making of the order appealed against, he give to the clerk of the local authority notice in writing stating his intention to appeal, together with a statement in writing of the grounds of appeal, and shall, within two days after giving such notice, enter into a recognizance be-

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Officer of health to report as to condition of premises.

Officer of health to deliver copies of report to clerk of local authority, who shall refer the same to a surveyor, etc.

Local authority to cause copies of reports to be given to owner, who may object to the same, and to prepare plan and specification of required works.

Clerk of local authority to give notice to owner, of plan, etc., of required works having been prepared.

Persons aggrieved by order of local authority may appeal against the same.

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fore some justice of the peace, with sufficient securities, conditioned to try such appeal at the said Court, and to abide the order of and pay such costs as may be awarded by the Court or any adjournment thereof; and the Court, upon the appearing of the parties, or upon their making default, shall have full power and jurisdiction to make such order and give such directions as under the circumstances shall seem just, and may, according to its discretion, award such costs to the party appealing or appealed against as they think proper, and the determination of the Court in or concerning the premises shall be conclusive and binding on all persons to all intents or purposes whatsoever: Provided,

First, that if there be not time to give such notice and enter into such recognizance as aforesaid, then such appeal may be made to, and such notice, statement, and recognizance be given and entered into for the next sessions at which the appeal can be heard:

Secondly, that on the hearing of the appeal, no grounds of appeal shall be gone into or entertained other than those set forth in such statement as aforesaid:

Thirdly, that in any case of appeal the Court shall, at the request of either party, state the facts specially for the determination, in England or Ireland, of her Majesty's Court of Queen's Bench, or in Scotland of either division of the Court of Session, in which case it shall be lawful to remove the proceedings, by writ of *certiorari* or by petition, into the said Courts of Queen's Bench or to the Court of Session respectively:

Fourthly, that pending any appeal no work shall be done nor proceedings taken under any order until after the determination of such appeal, or it shall cease to be prosecuted.

Notice to be given where owner appeals on ground that he is not responsible.

Sect. 10. If the owner appeal from the decision of the local authority upon the objection that he is not responsible for the state and condition of his premises, he shall be bound to give notice of his appeal, and a statement in writing of the ground thereof, to the person or persons, or to the parish or district, alleged by him to be the occasion of his premises being in such a state or condition as to render them liable to be reported upon under the provisions of the Act, and such person or persons, or parish or district, may appear before the Court, and be heard against his or their alleged liability.

Where local authority decide in favour of owner, reports and notices to be sent to parties liable.

Sect. 11. If the local authority shall decide in favour of the objection of the owner of the premises that some other person or persons, or that the parish or district in which the premises are situate, is or are responsible for the state and condition of his premises, the local authority shall forthwith send copies of the reports of the officer of health and of the surveyor or engineer to such person or persons, or to the officer of such parish or district, together with notice of his or their alleged liability, and shall appoint a time and place for hearing the parties so alleged to be liable, and give notice thereof to the said parties and also to the owner of the premises, and the local authority shall make such order thereupon as to them shall seem just, and the same shall be subject to appeal in manner aforesaid.

On representation by householders that disease exists in any house, officer of health to inspect and report.

Sect. 12. If and whenever any four or more householders living in or near to any street by writing under their hands represent to the officer of health that in or near that street any premises are in a condition or state dangerous to health so as to be unfit for human habitation, he shall forthwith inspect the premises, and report thereon; but the absence of any such representation shall not excuse him from inspecting any premises, and reporting thereon.

If local authority neglect to enforce Act, sec-

Sect. 13. In the event of the local authority declining or neglecting for the space of three calendar months after receiving such report to

take any proceedings to put this Act in force, the householders who signed such representation may address a memorial to the secretary of state stating the circumstances, and asking that an inquiry be made, and upon receipt of such memorial the said secretary of state may direct the local authority to proceed under the provisions of the Act, and such direction shall be binding on the local authority.

Sect. 14. Within three calendar months after the service on the owner of the order by the clerk of the local authority, or, in the case of appeal, within one calendar month after the order of quarter sessions, or, in the event of a further appeal, within one calendar month after the order of the Court of final appeal, the persons so served with the order of the local authority shall each of them signify in writing to the clerk of the local authority whether he is willing to effect the works required to be executed; and where two or more persons shall so signify, the right of effecting the works shall be given first to the person whose ownership is first or earliest in title.

Sect. 15. Where the owner of the premises and his residence or place of business are known to the local authority, it shall be the duty of the clerk of the local authority, if the owner be residing or have a place of business within the district of such local authority, to give any notice by this Act required to be served on him to the owner, or for him, to some inmate of his place of residence or business within the place; and if he be not residing within such district, or has no place of business therein, then to send the notice by post in a registered letter addressed to the owner at his place of residence or business; provided that the notice served upon the agent of the owner shall be deemed notice to the owner.

Sect. 16. Where the owner of the premises or his residence or place of business is not known to, or after diligent inquiry cannot be found by the local authority, then the clerk of the local authority may serve the notice by leaving it, addressed to the owner, with some occupier of the premises, or if there be not an occupier, then by causing it to be put up on some conspicuous part of the premises.

Sect. 17. Every notice required to be given by the clerk of the local authority by this Act shall be in writing or print, or partly in writing and partly in print, and shall be signed by the clerk of the local authority or deputy appointed by him.

Sect. 18. The owner on whom the local authority shall have imposed in the first instance the duty of executing the work shall, within two calendar months thereafter, commence the works as shown on the plan and described in the specification, and shall diligently proceed with and complete the same in conformity with the specification to the satisfaction of the surveyor or engineer appointed by the local authority; and if such owner shall fail therein, the local authority shall require the owner next in order as aforesaid to execute the said works, and in case of his default shall require the remaining owners in their order as aforesaid; and if all such owners shall make default, the local authority shall, as the case may seem to them to require, either order the premises to be shut up or to be demolished, or may themselves execute the required works in conformity with the specification.

Sect. 19. Where the local authority themselves execute the works, they may apply to the Court of quarter sessions having jurisdiction over the place of which they are the local authority for an order charging on the premises on which the works have been executed the amount of all costs, charges, and expenses that have been incurred by such authority in or about the execution of such works, including the costs of obtaining the order; and the Court of quarter sessions, when satisfied of the

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tary of state may compel it to proceed.

Owner to signify to clerk of local authority whether he is willing to execute specified works.

Service of notice on owner whose name and residence are known.

Service of notice on owner whose name or residence is not known.

Notices to be signed by the local authority.

Local authority to require owners to execute works as in specification.

Proceedings of local authority in case owners neglect.

Provision in case local authority themselves execute the works.

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amount so expended, shall make an order accordingly, charging on the premises the amount of such costs, charges, and expenses, together with interest at the rate of four pounds per cent. per annum, and such order shall be filed and recorded in manner hereinafter mentioned, and thereupon the amount of principal and interest thereby secured shall be a charge on the house, bearing interest at four per centum, and having priority over all other estates, incumbrances, and interests whatsoever, and the local authority shall, for the purpose of obtaining satisfaction of the moneys so charged, or of any interest thereon, be deemed to be a mortgagee of an absolute estate in the house, and shall be invested with all the powers conferred on mortgagees by part 2 of the Act of the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter one hundred and forty-five, and in Scotland such order shall be recorded in the appropriate register of sasines.

Local authority  
to pay compensa-  
tion when total  
demolition re-  
quired.

Sect. 20. If the requirements of the order involve the total demolition and not the improvement of the premises specified therein, the owner shall, within three months after service of the order, proceed to take down and remove the premises, and if such owner fail therein, then the local authority shall proceed to take down and remove the same; and the local authority shall sell the materials, and after deducting the expenses incident to such taking down and removal, pay over the balance of moneys, if any, to the owner.

Determination of  
tenancies.

Sect. 21. Where at the time of making the order the premises specified therein, or any part thereof, are or is subject to any tenancy from year to year, or for a year or for any less term, the local authority shall give notice to every such tenant, stating the time at which such tenancy will be determined.

Remedies of  
owner for breach  
of covenant, etc.,  
not to be pre-  
judiced.

Sect. 22. Provided always, that nothing in this Act contained shall prejudice or interfere with the rights or remedies of any owner for the breach, nonobservance, or nonperformance of any covenant or contract entered into by a tenant or lessee in reference to any premises in respect of which any order shall be made by a local authority; and if any owner shall be obliged to take possession of any premises in order to comply with any order made under the provisions of this Act, such entry or taking possession shall not affect his right to avail himself of any such breach, nonobservance, or nonperformance that may have occurred prior to his so taking possession.

Owner instead of  
effecting im-  
provements may  
take down pre-  
mises.

Sect. 23. If the order be that the premises require improvement, the owner, including therein the owner of the first estate of inheritance, if he think fit, may, instead of effecting the works required by the plan and specification, take down the premises; but in every such case, and also in the event of the owner desiring to retain the site of the premises required by the order to be totally demolished, no house or other building or erection shall be erected on all or any part of the site of the premises so taken down which shall be injurious to health; and the local authority may at any time make an order upon the owner to abate or alter the said house, building, or erection, as the case may require; and in the event of noncompliance with such order the local authority may, at the expense of the owner thereof, abate or alter any house or other building or erection at any time wholly or partly erected contrary to the provisions of this section.

Application may  
be made to jus-  
tices where more  
than one owner  
of premises in-  
cluded in order  
under Act, and  
any one owner  
neglects to com-  
ply with such  
order.

Sect. 24. When there are two or more owners of any premises, and it appears to any two justices in petty sessions, on application of any owner of such premises, that the interest of the applicant in the premises will be prejudiced by the neglect and default of any other owner to deal with the premises in conformity with the order so made, it shall be lawful for such justices, if the applicant undertake to their satisfaction to bring the premises into conformity with such order, to make an order

empowering the applicant forthwith to take possession of the premises, and to do all such works as may be necessary for bringing the same into conformity with such order, and within such time as shall be fixed by such justices, and on noncompliance by such last-mentioned applicant with his undertaking, it shall be lawful for the justices to make a like order in favour of any other owner.

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Sect. 25. Where any owner has completed any works required to be executed by a local authority in pursuance of this Act, he may on the completion thereof apply to the local authority for a charging order charging on the premises on which the works have been executed an annuity as compensation to the owner for the expenditure incurred by him in executing such works, and shall produce to the local authority the certificate of their surveyor or engineer that the works have been executed to his satisfaction, and also the accounts and vouchers for such works, and the local authority, when satisfied that the owner has duly executed such works, shall make a charging order accordingly.

Grant of annuity to owner on completion of works.

The annuity charged shall be a sum of six pounds for every £100 of such expenditure, and so in proportion for any less sum, to commence from the date of the order, and to be payable for a term of thirty years to the owner named in such order, his executors, administrators, or assigns.

Charging orders made under this Act shall be made according to the Form marked A. in the Second Schedule hereto annexed, or as near thereto as the circumstances of the case will admit.

The costs of obtaining the order to be allowed by the local authority shall be deemed to be part of the expenditure incurred by the owner.

Sect. 26. Every annuity created by a charging order under this Act shall be a charge on the premises comprised in the order, having priority over all existing and future estates, interests, and incumbrances, with the exception of quit-rents and other charges incident to tenure, tithe commutation rentcharges, and any charges created under any Act authorizing advances of public money; and where more annuities than one are chargeable under this Act on any premises, such annuities shall, as between themselves, take order according to their respective dates,

Incidence of charge.

Sect. 27. Every annuity charged on any premises by a charging order under this Act may be recovered by the persons for the time being entitled to the same by the same means and in the like manner in all respects as if it were a rentcharge granted by deed out of the premises by the owner thereof.

Charges recoverable as rent-charges in lieu of tithes.

Sect. 28. An order made in pursuance of this Act charging an annuity on any premises shall be, both at law and in equity, conclusive evidence that all notices, acts, and proceedings by this Act directed with reference to or consequent on the obtaining such order, or the making such charge, have been duly served, done, and taken, and that such charge has been duly created, and that it is a valid charge on the premises declared to be subject thereto.

An order to be evidence of compliance with Act.

Sect. 29. Every charging order made in pursuance of this Act relating to premises in Middlesex or Yorkshire shall be registered in the same manner respectively as if such charge were made by deed by the absolute owner of such lands without the aid of this Act; and a copy of every such charging order of the certificate of such surveyor or engineer as aforesaid, together with a copy of the accounts as passed by the local authority, and which copies shall be certified to be true copies by the clerk of such local authority, shall, within six months after the date of such charging order, be deposited with the clerk of the peace of the county in which the premises are situate, who shall be entitled to a fee of ten shillings for filing and recording the same; and every charging

Registry of charging order on premises in Middlesex and Yorkshire.

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Assignment of charge.

order made in pursuance of this Act relating to premises in Scotland shall be recorded in the appropriate register of sasines.

Sect. 30. The proprietor of any charge may, by deed under seal, stamped with the same ad valorem stamp as if it were an assignment of a charge created by deed, assign the benefit of the charging order, or of any portion of the charge comprised therein, to any other person; and on such assignment being executed, the assignee shall have the same rights under the order as the proprietor would have had if no such assignment had been executed; and any assignee of a charging order may, by deed stamped in manner aforesaid, assign the charge to any other person. Any assignment of a charging order may be in the form marked B in the schedule hereto, or in any other convenient form.

As to expenses of local authority.

Sect. 31. All expenses incurred by the local authority in pursuance of this Act shall be defrayed by them out of a special local rate, not exceeding twopence in the pound in any year, which they are hereby empowered to assess and levy for the purposes of this Act.

Power to public works loan commissioners to advance moneys to local authority.

Sect. 32. The public works loan commissioners, as defined by the "Public Works Loan Act, 1853," may, if they think fit, lend to any local authority, and any local authority may borrow from the said commissioners, such sums as the said authority may require for the purposes of this Act, but the amount of every loan shall be sanctioned by the lords commissioners of the treasury.

Service of notice on the local authority.

Sect. 33. Any summons, notice, writ, or other proceeding at law or in equity, or otherwise, in relation to carrying into effect the objects and purposes of this Act, required to be served upon the local authority, may be lawfully served by delivering the same to the clerk of the local authority, or leaving the same at his office with some person employed there by him.

Notices served by local authority to be signed by the clerk.

Sect. 34. Any notice, demand, or other written document served by the local authority for the purposes of this Act shall be signed by the clerk of the local authority.

Penalty for obstructing officer of health, etc., in execution of Act.

Sect. 35. Where any person at any time obstructs the officer of health or other person acting in the performance of anything which the local authority or their officers respectively are by this Act required or authorized to do, every person so offending shall for every such offence forfeit not exceeding twenty pounds.

Penalty for preventing execution of Act.

Sect. 36. If the occupier of any premises prevents the owner thereof, or if the owner or occupier of any premises prevents the officer of health, or their officers, agents, servants, or workmen, from carrying into effect with respect to the premises any of the provisions of this Act, after notice of the intention so to do has been given to the occupier, or, as the case shall be, to the owner, any justice on proof thereof may make an order in writing requiring the occupier to permit the owner, or, as the case shall be, requiring the owner or occupier, or both, to permit the officer of health, or the local authority, and their officers, agents, servants, and workmen, to do all things requisite for carrying into effect with respect to the premises the provisions of this Act; and if at the expiration of ten days after the service of such order of the justice the occupier or owner fails to comply therewith, every person so offending shall for every day during which the failure continues forfeit not exceeding twenty pounds: Provided that during any such failure by the occupier the owner, unless assenting thereto, shall not be liable to the forfeiture.

Appearance of local authority.

Sect. 37. The local authority may appear before any judge, justices, borough magistrates, sheriff, or sheriff substitute, by their clerk, and any company or body corporate may appear before the said magistrate or magistrates by any member of their board of management.

Sect. 38. Penalties under this Act may be recovered before two justices in manner directed by the 11 & 12 Vict. c. 43, or any Act amending the same.

Sect. 39. [Application of Act to Scotland.]

Sect. 40. [Application to Ireland.]

Sect. 41. Any act, power, or jurisdiction hereby authorized to be done or exercised by two justices may be done or exercised by the following magistrates within their respective jurisdictions; that is to say: As to England, by any metropolitan police magistrate or other stipendiary magistrate sitting alone at a police court or other appointed place, or by the Lord Mayor of the city of London, or any alderman of the said city, sitting alone or with others, at the Mansion House or Guildhall.

3. Acts for improving Artisans' and Labourers' Dwellings.

Recovery of penalties.

Jurisdiction of certain magistrates.

## FIRST SCHEDULE.

TABLE A.

*England and Wales.*

Places to which Act applies.	Description of local authority.	Description of local rate.	Description of clerk of local authority.
<p>The City of London and the liberties thereof.</p> <p>Local Acts. { 11 &amp; 12 Vict. c. 163. 14 &amp; 15 Vict. c. 91.</p>	<p>Commissioners of sewers of the City of London.</p> <p>Local Act, 11 &amp; 12 Vict. c. 163.</p>	<p>The consolidated rate, 11 &amp; 12 Vict. c. 163, s. 158.</p>	<p>The clerk to the commissioners.</p> <p>11 &amp; 12 Vict. c. 163, s. 25.</p>
<p>The metropolis.</p>	<p>The vestries and district boards under the Act 18 &amp; 19 Vict. c. 120, within their respective parishes and districts.</p>	<p>Rate to be levied for defraying the expenses of the Act 18 &amp; 19 Vict. c. 120.</p>	<p>Clerk of the vestries or district boards.</p>
<p>Boroughs not within the jurisdiction of such local board as aforesaid.</p>	<p>The mayor, aldermen, and burgesses, acting by the council.</p>	<p>The borough fund or other property applicable to the purposes of a borough rate or the borough rate.</p>	<p>The town clerk.</p>
<p>Any town not included in the above descriptions, and under the jurisdiction of commissioners, trustees, or other persons entrusted by any local Act with powers of improving, cleansing, or paving any town.</p>	<p>The commissioners, trustees, or other persons entrusted by the local Act with powers of improving, cleansing, or paving the town.</p>	<p>Any rate leviable by such commissioners, trustees, or other persons, or other funds applicable by them to the purposes of improving, cleansing, or paving the town.</p>	<p>The clerk of the commissioners or trustees or other persons or other officer performing the duties of clerk.</p>



## FIRST SCHEDULE (continued).

Places to which Act applies.	Description of local authority.	Description of local rate.	Description of clerk of local authority.
Places within the jurisdiction of local boards, constituted in pursuance of the "Public Health Act, 1848," and the "Local Government Act, 1858," or one of such Acts.	The local board.	General district rate, 11 & 12 Vict. c. 63, s. 87.	Clerk of the local board or other officer performing duties of clerk, 11 & 12 Vict. c. 63, s. 37.

## SECOND SCHEDULE.

## FORM MARKED A.

*The "Artisans' and Labourers' Dwellings Act, 1868."*

County of .  
 Parish of .  
 No. .

## Charging Order.

Insert description of local authority.

*The* being the local authority under the above-mentioned Act, do, by this order under their hands and seal, charge the inheritance or fee of the premises mentioned in the Schedule hereto with the payment to of the sum of pounds, payable yearly on the day of , for the term of years, and being in consideration of an expenditure of pounds incurred by him in respect of the said premises.

## SCHEDULE.

Insert description of premises charged.

## FORM MARKED B.

*Form of Assignment of Charge.—To be endorsed on Charging Order.*

Dated the day of .

I, the within-named , in pursuance of the "Artisans' and Labourers' Dwellings Act, 1868," and in consideration of pounds this day paid to me, hereby assign to the within-mentioned charge.

(Signed)

THIRD SCHEDULE.

I. Form of Order by Court of Quarter Sessions or Petty Sessions, or Court of Burgh Magistrates in Scotland.

Be it remembered, that on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, upon the report hereinafter mentioned, we, the undersigned justices, assembled at the Court of quarter sessions holden in and for the county of \_\_\_\_\_, or assembled in petty sessions for the division or district of the borough or county of \_\_\_\_\_, or members of the Court of burgh magistrates for [as the case may be], do hereby order and determine that one or more house or houses or buildings situate in a certain court or alley within the borough or burgh, known or designated as \_\_\_\_\_ court or alley [or otherwise distinguishing the premises], and specified in the report of the officer of health for the \_\_\_\_\_, dated the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, is or are unfit for human habitation, and ought to be improved or demolished [as the case may be], in pursuance of the "Artisans' and Labourers' Dwellings Act, 1868."

II. Form of Notice by Clerk of the Peace, Clerk of the Justices, or Clerk of the Court of Burgh Magistrates in Scotland to Clerk of Local Authority.

*Artisans' and Labourers' Dwellings Act, 1868."*

I, A. B., clerk of the peace or clerk of the justices [or clerk of the Court of burgh magistrates] for the \_\_\_\_\_, do hereby certify, that on the \_\_\_\_\_ day of \_\_\_\_\_, 18\_\_\_\_, the justices assembled at the Court of quarter sessions, or assembled at the petty sessions for the \_\_\_\_\_ [or Court of the burgh magistrates] [as the case may be], made an order, of which the following is a true copy :

[Here give a copy of the presentment, Form I.]

As witness my hand, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord 18\_\_\_\_.

(Signed) \_\_\_\_\_ (A. B.) Clerk of the peace or clerk of the justices for \_\_\_\_\_ [or clerk of the Court of burgh magistrate].

To the \_\_\_\_\_ clerk of the \_\_\_\_\_ of \_\_\_\_\_.

Lord's Day.

[27 Hen. 6, c. 5; 1 Car. 1, c. 1; 29 Car. 2, c. 7; 10 & 11 Wm. 3, c. 24; 21 Geo. 3, c. 29; 3 & 4 Will. 4, c. 31.]

Profanation of the Lord's Day, vulgarly (but improperly) called Sabbath-breaking, is an offence against God and religion, punished by the municipal law of England. For, besides the notorious indecency and scandal of permitting any secular business to be publicly transacted on that day, in a country professing Christianity, and the corruption of morals which usually follows such profanation, the keeping one day in seven holy, as a time of relaxation and refreshment, as well as for public worship, is of admirable service to a State, considered merely as a civil institution. It humanizes, by the help of conversation and society, the manners of the lower classes, which would otherwise degenerate

Sabbath-breaking.

Lord's Day. into a sordid ferocity and savage selfishness of spirit; it enables the industrious workman to pursue his occupation in the ensuing week with health and cheerfulness; it imprints on the minds of the people that sense of their duty to God, so necessary to make them good citizens; but which yet would be worn out and defaced by an unremitted continuance of labour, without any stated times of recalling them to the worship of their Maker. (4 *Blac. Com.* 63.)

The penalties incurred under the 1 Eliz. c. 2, s. 14, and the 3 Jac. 1, c. 4, for non-attendance at church on Sundays are repealed by the 9 & 10 Vict. c. 59, s. 1.

Fairs, etc., on  
feast days, or  
Sundays.

By the 27 Hen. 6, c. 5, s. 1, all fairs and markets upon feast days or on Sundays (the four Sundays in harvest excepted) (a) shall clearly cease, on pain of forfeiture of the goods exposed to sale; and fairs holden theretofore on solemn festivals shall thereafter be holden three days before or three days after such festivals.

Sports on.

King James I., in 1618, publicly declared to his subjects in what was called *The Book of Sports*, these games following to be lawful, viz. dancing, archery, leaping, vaulting, Maygames, Whitsun-ales, and morris-dances; and did command that no such honest mirth or recreation should be forbidden to his subjects on Sunday after evening service; but restraining all recusants from this liberty; and commanding each parish to use these recreations by itself; and prohibiting all unlawful games, bear-baiting, bull-baiting, interludes, and bowling, by the meaner sort. (*Dalt. c.* 46.)

After which it was enacted, by the 1 Car. 1, c. 1, that there shall be no concourse of people out of their own parishes on the Lord's Day for any sport or pastimes; nor any bear-baiting, bull-baiting, interludes, common plays, or other unlawful exercises and pastimes, used by any persons within their own parishes; on pain that every offender, being convicted within a month after the offence, before one justice, or chief officer of any city, borough, or town corporate, on view, or confession, or oath of one witness, shall forfeit, for every offence, 3s. 4d. to the poor, to be levied by the constable and churchwardens by distress; in default of distress, the party to be set publicly in the stocks for three hours.

Places of enter-  
tainment on.

Any house, room, or other place, which shall be open upon the Lord's Day for public entertainment or amusement, or for publicly debating on (religious or) any subject whatever, and to which persons shall be admitted by the payment of money, or by tickets sold for money, shall be deemed a disorderly house or place; and the keeper thereof shall forfeit £200 for every day that it shall be so opened, etc.; the person managing or conducting the entertainment, or acting as master of the ceremonies there, or as president, chairman, or moderator, £100; and every door-keeper, or servant, or other persons, who shall collect money, or tickets, or deliver out tickets, £50, to him who shall sue. Stat. 21 Geo. 3, c. 49. (See tit. "*Disorderly House*," Vol. I.)

Killing game.

By the 1 & 2 Will. 4, c. 32, s. 3, killing or taking game on a Sunday or Christmas Day subjects the party to a penalty not exceeding £5 and costs. (See tit. "*Game*," Vol. II.)

Trading on.

The 29 Car. 2, c. 7, s. 1, "for the better observation and keeping holy the Lord's Day, commonly called Sunday," enacts, "That all the laws enacted and in force concerning the observation of the Lord's Day, and repairing to the church thereon, be carefully put in execution; and that all and every person and persons whatsoever, shall on every Lord's Day apply themselves to the observation of the same, by exercising themselves thereon in the duties of piety and true religion, publicly and

(a) This exception is repealed by the 13 & 14 Vict. c. 23.

privately; and that no tradesman, artificer, workman, labourer, or other person whatsoever, shall do or exercise any worldly labour, business or work of their ordinary callings upon the Lord's Day, or any part thereof (works of necessity and charity only excepted); and that every person being of the age of fourteen years or upwards, offending in the premises, shall for every such offence forfeit the sum of 5s.; and that no person or persons whatsoever shall publicly cry, show forth, or expose to sale any wares, merchandises, fruit, herbs, goods or chattels whatsoever, upon the Lord's Day, or any part thereof, upon pain that every person so offending shall forfeit the same goods so cried or showed forth, or exposed to sale."

*Lord's Day.*

Sect. 3. "Nothing in this Act contained shall extend to the prohibiting of dressing of meat in families, or dressing or selling of meat in inns, cooks' shops or victualling houses, for such as otherwise cannot be provided, nor to the crying or selling of milk before nine of the clock in the morning or after four of the clock in the afternoon."

Dressing of meat for private families, victualling houses, selling milk, etc.

Sect. 4. "No person or persons shall be impeached, prosecuted or molested for any offence before mentioned in this Act, unless he or they be prosecuted for the same within ten days after the offence committed."

Prosecution to be within ten days.

Mackerel are allowed to be sold on Sundays, before or after Divine service, by the 10 & 11 Will. 3, c. 24, s. 14.

Mackerel.

As to opening alehouses, etc., on Sundays, see tit. "*Alehouse*," Vol. I.

Alehouses.

The 6 & 7 Will. 4, c. 37, s. 14, tit. "*Baker*," Vol. I., contains enactments relative to the baking of bread, etc., on Sundays, out of London, etc. The 3 Geo. 4, c. 96, s. 16, contains enactments as to the baking of bread, etc., in London, or within ten miles thereof, etc.

Baking bread, etc., on Sundays.

The 29 Car. 2, extends only to such work, business, or contract, as is done or made on the Lord's Day, in the "ordinary calling" of one of the parties. Therefore, in *Drury v. Defontaine*, (1 Taunt. 181), it was ruled that a sale of a horse on a Sunday was not void, such sale not being within the ordinary calling of the plaintiff or his agent; but *Mansfield, C.J.*, intimated an opinion, that, if it had been such ordinary calling, the contract would have been void. (And see *Smith v. Sparrow*, 4 Bing. 84; *Bloxsome v. Williams*, 3 B. & C. 232; 5 D. & R. 84.) And it has been held, that a sale and warranty by a horse-dealer on a Sunday is within the Act, and illegal. (*Fennell v. Ridler*, 5 B. & Cres. 406; 8 D. & R. 204, S. C.) And the contract, etc., if made in the ordinary calling of one of the contracting parties, is void, though it does not relate to manual labour calculated to meet the public eye. (*Ib.*)

What cases within the 29 Car. 2, c. 7.

A contract of hiring made on a Sunday between a farmer and a labourer for a year is valid, and a service under it confers a settlement. (*R. v. Whitnash*, 7 B. & C. 596; 1 M. & R. 452; 1 M. & R. M. C. 177, S. C.)

A bill of exchange may be dated on a Sunday. (*Begbie v. Levi*, 1 Crom. & J. 180.) And a guarantee may be given on a Sunday for the faithful services of a person to be employed as a traveller. (*Norton v. Powell*, 4 Man. & G. 42.)

But, if a bill of exchange falls due on that day, it is at common law payable the day before; so, if the third day of grace falls on a Sunday, it must be presented on the Saturday, the second day. For acceptances, *supra* protest, see the 6 & 7 Will. 4, c. 58. When notice of dishonour of a bill of exchange is received on a Sunday, the letter may be left unopened until the next day, which is regarded in law as the day of the receipt of the notice of dishonour. (*Hawkes v. Salter*, 4 Bing. 715; *Wright v. Shawcross*, 2 B. & Ald. 501, n. *Poole v. Dicus*, 1 Bing. N. C. 649.)

Lord's Day.

An agreement by an attorney for the settlement of his client's affairs, whereby he renders himself personally liable, may be made on a Sunday; for it is something beyond his ordinary calling, even assuming that as an attorney he came within the statute, which it should seem he does not. (*Peate v. Dickens*, 3 Dowl. P. C. 171; 1 *Crom. M. & R.* 422; 5 *Tyrrw.* 116, S. C.)

So the enlistment of a soldier by a recruiting officer is not within the statute. (*Wolton v. Gavin*, 16 Q. B. 48.)

The words, "other person or persons," mean other persons *ejusdem generis* with the words preceding them, viz. "tradesman, artificer, workman, labourer." They do not, therefore, include the owner or driver of a stage coach, and, therefore, their contracts to carry passengers on a Sunday are binding. (*Sandiman v. Breach*, 9 D. & R. 796; 7 B. & C. 96, S. C. See sect. 2, *infra*.) Nor do they include a farmer. (*Reg. v. Silvester*, 33 L. J., M. C. 79.) Whether haymaking is a work of necessity was held to be a question of fact upon which the finding of the justices was conclusive. (*Ib.*)

Baking provisions for customers is within the exception as to works of necessity, and, it seems, within the exception in section 3, as to cooks' shops (*R. v. Cox*, 2 Burr. 787; *R. v. Younger*, 5 T. R. 449); but baking rolls on a Sunday is within the Act. (*Crepps v. Durden*, *Cowp.* 640.) And see the 3 Geo. 4, c. 106, s. 16, which enacts, that no baker in the city of London, or within ten miles thereof, shall make, bake, or expose to sale any bread or rolls, or bake any meat, puddings, pies, or tarts, or in any other manner exercise the trade of a baker on the Lord's Day, under the penalties therein mentioned. And see also the 6 & 7 Will. 4, c. 37, s. 14, relative to baking bread on a Sunday elsewhere than in London (a).

(a) In *R. v. Cox* (2 Burr. 785), an information was moved for against a justice of the peace, for refusing to receive an information against a baker, for exercising his trade on a Sunday, contrary to the aforesaid statute of the 29 Car. 2, c. 7. On showing cause, it appeared that the charge against the baker was not for baking bread, but for baking puddings and pies, and other such things, for dinner. And the Court were of opinion, that this was not an offence within the Act, but fell within the exception of works of necessity and charity, and within the equity of the proviso, as being a cooks' shop; there being the same reason that the baker should bake for others, as that a cook should roast and boil for them: and it is better that one baker and his men should stay at home, than many families and servants. And the rule to show cause was discharged with costs.

Upon the same principle, it has been ruled, that the statute does not prohibit a baker baking dinners for his customers on a Sunday. Lord *Kenyon*, in that case, said, that the statute should be construed equitably, so as that it may answer the purposes of public convenience, taking care, at the same time, that Sunday

should not be profaned. (*R. v. Younger*, 5 T. R. 449.)

In *Crepps v. Durden* (*Cowp.* 640), the plaintiff was convicted for selling small hot loaves of bread on the same day, being Sunday, by four separate convictions, in the sum of 5s. each. It was objected, that there can be but one offence, attended with one single penalty, on one and the same day. By Lord *Mansfield*—The true construction of the Act is, exercising his ordinary trade upon the Lord's Day, and that without any fraction of a day, hours, or minutes. It is one entire offence; whether longer or shorter in point of duration, or whether it consist of one, or a number of particular acts, makes no difference. The penalty incurred is 5s. There is no idea conveyed by the Act, that, if a tailor sews on the Lord's Day, every stitch he takes is a separate offence; or, if a shoemaker or carpenter work for different customers at different times on the same Sunday, that those are so many separate and distinct offences. There can be but one entire offence on one and the same day. And this is even a much stronger case than that upon the game laws. Killing a single hare is an offence, but the killing of ten more in the same day will not

An action will not lie upon a contract illegally made and completed on a Sunday, although entered into by an agent without the direction of his principal, and although the objection is taken by the party at whose request the contract was so entered into. (*Smith v. Sparrow*, 4 Bing. 84; 12 *Moore*, 266; 2 *C. & P.* 544, *S. C.*)

But where A., not knowing that B. was a horsedealer, made a verbal bargain with him on a Sunday for the purchase of a horse, the price (which was above £10) being then specified, and the horse warranted sound; but it was not delivered till the following Tuesday, when the money was paid; it was held, that the contract was not complete until the delivery of the horse, and that, therefore, it was not void under this Act; but assuming it to be void, as the purchaser was ignorant that the vendor was exercising his ordinary calling on the Sunday, he had not been guilty of any breach of the law, and was, therefore, entitled to recover back the price of the horse for breach of the warranty. (*Bloxsome v. Williams*, 3 *B. & C.* 232; 5 *D. & R.* 82, *S. C.*)

And it is to be observed that where a man keeps goods which he has bought on a Sunday, and afterwards promises to pay for them, he is liable, at all events, on the *quantum meruit*. (*Williams v. Paul*, 6 Bing. 653; 4 *M. & P.* 532, *S. C.*) But this case was doubted to be law by *Parke, B.*, in *Simpson v. Nicholls*, 3 *M. & W.* 240.

By the 29 Car. 2, c. 7, s. 2, "No drover, horse-courser, waggoner, butcher, higgler, their or any of their servants, shall travel or come into his or their inn or lodging upon the Lord's Day, or any part thereof, upon pain that each and every such offender shall forfeit 20s. for every such offence, and that no person or persons shall use, employ, or travel upon the Lord's Day with any boat, [see 7 & 8 *Geo.* 4, c. lxxv.], wherry, lighter, or barge, except it be upon extraordinary occasion, to be allowed by some justice of the peace of the county, or head officer, or some justice of the peace of the city, borough, or town corporate, where the fact shall be committed; upon pain that every person so offending shall forfeit and lose the sum of 5s. for every such offence. And that, if any person offending in any of the premises shall be thereof convicted before any justice of the peace of the county, or the chief officer or officers, or any justice of the peace, of or within any city, borough, or town corporate, where the said offences shall be committed, upon his or their view, or confession of the party, or proof of any one or more witnesses by oath (which the said justice, chief officer or officers, is by this Act authorized to administer), the said justice or chief officer or officers shall give warrant under his or their hand and seal, to the constables or churchwardens of the parish or parishes where such offence shall be committed, to seize the said goods cried, showed forth, or put to sale as aforesaid, and to sell the same, and to levy the said other forfeitures or penalties by way of distress and sale of the goods of every such offender distrained, rendering to the said offenders the overplus of the moneys raised thereby; and in default of such distress, or in case of insufficiency or inability of the said offender to pay the said forfeitures or penalties, that then the party offending be set publicly in the stocks by the space of two hours. And all and singular the forfeitures or penalties aforesaid shall be employed and converted to the use of the poor of the parish where the said offences shall be committed, saving only that it shall and may be lawful to and for any such justice, mayor, or head officer or officers, out of the said forfeitures or penalties, to reward any person or persons that shall inform of any offence against this Act, according to their discretions, so as such reward exceed not the third part of the

Travelling on a Sunday.

In what manner the conviction shall be.

Penalty, how levied.

If insufficient distress, the offender shall be set in stocks.

Forfeitures, how disposed of.

multiply the offence, or the penalty imposed by the statute for killing one. Here, repeated offences are not the object which the legislature had

in view in making the statute, but, singly, to punish a man for exercising his ordinary calling on the Lord's Day.

Lord's Day. forfeitures or penalties." (Sect. 4, *ante*, 575, limits the time for prosecutions for the penalty to ten days).

The driver of a van travelling to and from distant towns (as London and York) is a carrier within the meaning of this Act, and liable to the penalty for driving on a Sunday, though the driver of a stage or mail coach may not be so liable. (*Ex parte Middleton*, 3 B. & C. 164; 4 D. & R. 824, S. C.; *Sandiman v. Breach*, 7 B. & C. 96; 9 D. & R. 796, S. C. *supra*.)

A conviction adjudging the offender to pay 5s. penalty and 11s. costs, the same, if not paid, to be levied by distress, and ordering the defendant in default of distress to be put in the stocks for two hours unless the penalty and costs and the costs of the distress were sooner paid, was held bad, for the Act does not authorize the putting into the stocks for the nonpayment of costs. (*Reg. v. Barton*, 18 L. J., M. C. 56.)

**Exemptions from toll.**

As to the exemption from toll of persons going to or returning from church on a Sunday, see tit. "*Highway*," Vol. II.

**Serving process on.**

By the 29 Car. 2, c. 7, s. 6, no person upon the Lord's day shall serve or execute any writ, process, warrant, order, judgment, or decree (except in cases of treason, felony, or breach of the peace), but the service thereof shall be void; and the person serving the same shall be as liable to answer damages to the party grieved as if he had done the same without any writ, process, warrant, order, judgment, or decree.

**Ecclesiastical process.**

But this doth not extend to ecclesiastical process; as, citations or excommunications. (*Gibs*. 271; *Walgrave v. Taylor*, 1 Ld. Raym. 706.)

**Justice's warrant to obtain sureties for good behaviour.**

A justice issued a warrant to the constable, to make a person find sureties for his good behaviour: the constable executed the warrant on a Sunday, and he was justified by the Court; who resolved that a warrant for good behaviour is a warrant for the peace, and more; and that this statute is to be favourably interpreted for the peace. (*Johnson v. Coltson*, T. Raym. 250.)

**Arresting for a rescue or escape.**

So a person may be arrested on a Sunday, on an attachment for a rescue. (*Anon.*, *Willes*, 459.) Or under an escape warrant. (*Sir W. Moore's case*, 2 Ld. Raym. 1028; 2 Salk. 626, S. C.) Or, if the party has wrongfully escaped, he may be retaken on a Sunday, without a warrant. (*Ibid.*; and *Atkinson v. Jameson*, 5 T. R. 25; and *Featherstonehaugh v. Atkinson*, *Barnes*, 373.)

**Bail taking defendant.**

But bail cannot take the defendant on a Sunday, in order to surrender him. (*Brookes v. Warren*, 2 Bla. Rep. 1273.)

**Warrant of commitment for a penalty cannot be executed on.**

It has been held that, by the construction of the 29 Car. 2, c. 7, s. 6, a warrant of commitment for a penalty cannot be executed on a Sunday, and that the apprehension on that day is wholly void, and the defendant entitled to be discharged out of custody. (*R. v. Myers*, 1 T. R. 265.)

**Judicial acts may not be done on.**

Judicial acts cannot be done on a Sunday; but ministerial ones may. (*Mackalley's case*, 9 Coke, 66 b. See tit. "*Coroner*," Vol. I.)

**Discharge of prisoners in gaols on Sundays.**

By the 28 & 29 Vict. c. 126, s. 41, where the term of imprisonment of a prisoner in gaol expires on a Sunday, the prisoner shall be discharged on the preceding Saturday. See tit. "*Gaols*," Vol. II.

**3 & 4 Will. 4, c. 31.**

By the 3 & 4 Will. 4, c. 31, intituled, "An Act to enable the Election of Officers of Corporations and other Public Companies now required to be held on the Lord's Day to be held on the Saturday next preceding, or on the Monday next ensuing" (24th July, 1833), reciting, "Whereas

the profanation of the Lord's Day is greatly increased by reason of certain meetings which are usually or occasionally held thereon: and whereas it is the duty of the Legislature to remove as much as possible impediments to the due observance of the Lord's day:" it is enacted, "That every meeting or adjourned meeting of any vestry or corporation, whether ecclesiastical or civil, or of any public company, for the nomination, election, appointment, swearing in, or admission of any officer or officers, or for the transaction of any other secular affair of such vestry, corporation, or company, and every other meeting of a public and secular nature, which, according to any Act of Parliament, or according to any charter, grant, constitution, deed, testament, law, prescription, or usage whatsoever, is or shall be required to be held on any Lord's Day, or on any day which shall happen to be on a Lord's Day, shall be held on the Saturday next preceding or on the Monday next ensuing, at the like hour, with like form and effect as if the same had been held on such Lord's Day; and every matter transacted at any such meeting or adjourned meeting held upon any Lord's Day shall be absolutely void and of none effect, to all intents and purposes whatsoever: Provided always, that, when no such nomination, election, appointment, swearing in, or admission shall have taken place on such Saturday, every person whose term of office would, according to any such Act, charter, grant, constitution, deed, testament, law, prescription, or usage, have expired on any such Lord's Day, shall continue in office, and exercise and enjoy all the powers and privileges annexed or relating to such office, until and on such Monday next ensuing, in the same manner as if such Monday had been the customary day of nomination, election, appointment, swearing in, or admission."

*Lord's Day.*

Elections of officers of corporations and other public companies now required to be held on a Sunday shall be held on the Saturday preceding or the Monday following.

If election does not take place on the Saturday, the person holding office to continue so to do until the Monday.

Sect. 2. Whenever the nomination, election, appointment, swearing in, or admission of any such officer or officers as before mentioned shall not take place on such Saturday or Monday, or shall become void, the case shall be and is hereby declared to be within the provisions of an Act made and passed in the eleventh year of his late Majesty King George the First, intituled, "An Act for preventing the Inconveniences arising from Want of Elections of Mayors or other Chief Magistrates of Boroughs or Corporations being made upon the Days appointed by Charter or Usage for that Purpose, and directing in what Manner such Elections shall be afterwards made," as fully and effectually as if such officer or officers had been expressly named in the said Act.

Elections not made on such Saturday or Monday shall be taken to be within the 11 Geo. 1, c. 4.

By the 5 & 6 Will. 4, c. 76, s. 80, if any day appointed by the "Municipal Corporations Act" shall fall on a Sunday, the business is to be done on the Monday following.

County of —, } To the constable of —, in the said county, and to the church-  
to wit. } wardens of the parish of —, in the said county.

Forasmuch as A. O., of —, in the county of —, carrier, is duly convicted before me, J. P., esquire, one of her Majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanours, in the said county committed, for that he the said A. O., on the — day of —, in the — year of the reign of —, being the Lord's Day, commonly called Sunday, with his horses into and through the said parish of —, did travel, contrary to the statutes in that case made and provided, whereby he hath forfeited the sum of twenty shillings: these are, therefore, to command you forthwith to levy the said sum of twenty shillings, by distraining the goods and chattels of him the said A. O. And if within the space of [five] days next after such distress by you taken the said sum shall not be paid, together with the reasonable charges of taking and keeping the same, that then you do sell the said goods and chattels so by you distrained, and out of the money arising by such sale, that you do pay the sum of six shillings and eightpence, part of the said sum of twenty shillings, to A. I., of — [yeoman], who informed me of the said offence, and that you see the remaining sum of thirteen shillings and fourpence employed to the use of the poor of your said parish of —, returning to him the said A. O. the over-

Warrant on the 29 Car. 2, c. 7, to levy 20s. on carrier for travelling on Lord's Day; which same will do, mutatis mutandis, for other penalties under this title.



*plus upon demand, the reasonable charges of taking, keeping, and selling the said distress, being first deducted. And you are to certify to me, with the return of this precept, what you shall have done in the execution thereof. Herein fail you not. Given under my hand and seal at —, in the said county, the — day of —.*  
J. P.

## Lunatics (a).

### I. How far liable for Crimes. Prosecution and Treatment of Insane Criminals, p. 581.

[39 & 40 Geo. 3, c. 94, ss. 1, 2; 1 Vict. c. 14; 3 & 4 Vict. c. 54; 23 & 24 Vict. c. 75; 27 & 28 Vict. c. 29; 30 & 31 Vict. c. 12.]

### II. County and Public Lunatic Asylums. Sending Lunatics to, and Care and Treatment of them, p. 601.

[16 & 17 Vict. c. 97; 18 & 19 Vict. c. 105; 19 & 20 Vict. c. 87; 28 & 29 Vict. c. 80; 12 & 13 Vict. c. 103, s. 4; 24 & 25 Vict. c. 55, ss. 6, 7; 25 & 26 Vict. c. 111.]

### III. Private Lunatic Asylums. Sending of Pauper Lunatics to, p. 678.

[8 & 9 Vict. c. 100; 16 & 17 Vict. c. 96; 18 & 19 Vict. c. 105; 25 & 26 Vict. c. 111.]

Miscellaneous points as to lunatics.

(a) The Queen is the general guardian of idiots and lunatics. (17 Edw. 2, st. 1, c. 9 & 10). But the custody of lunatics is generally committed to the Lord Chancellor, Lord Keeper, or lords commissioners for the custody of the great seal, by the Queen's sign manual. All matters, therefore, touching lunatics are within the peculiar jurisdiction of the Court of Chancery.

Surety of the peace cannot be granted to or required from a person of non-sane memory upon his own request; but yet, if there be cause, the justice ought to provide for his safety. (*Dalt. c. 117.*) See as to the apprehension and confinement of lunatics at common law, *post*, 601.

The 16 & 17 Vict. c. 70 and 25 & 26 Vict. c. 86, relate to commissions in the nature of writs *de lunatico inquirendo*, and to the practice and course of proceeding under them, and the care and management of the persons and estates of lunatics so found by inquisition.

It was formerly held that a person of non-sane memory shall not avoid his own act, by reason of this defect; but his heir or executor might. (*Beverley's case*, 4 Rep. 123 b.) At the

present day, however, it is held that not only may a man's representatives, but he himself, may also show that at the time when he made a promise or sealed an instrument, he was so lunatic as not to know what he was about. (*Molton v. Camroux (in error)*, 4 Exch. 17, 19.)

The marriage of an idiot or lunatic, not being in a lucid interval, was formerly held to be absolutely void. (*Morrison's case*, cited 2 Steph., 258, 4th ed.) But by the 15 Geo. 2, c. 30, it is provided that the marriage of lunatics and persons under the phrensies (if found lunatic by inquisition or committed to the care of trustees by virtue of any Act of Parliament) before they are declared of sane mind by the Lord Chancellor or a majority of such trustees shall be totally void; and under this statute the marriage of a lunatic (so found by inquisition) is void, even though such marriage took place during a lucid interval. (*Ex parte Turing*, 1 Ves. & B. 140; and see 2 Phill. Ecc. R. 90.)

For provisions as to the management and administration of the estates and property of lunatics, see the 16 & 17 Vict. c. 70, ss. 108-147,

As to the incompetency of lunatics as witnesses, see tit. "*Evidence*," Vol. II.

1. *How far liable for Crimes, etc.*

## I. How far liable for Crimes. Prosecution and Treatment of Insane Criminals.

*Non compos mentis* is of four kinds:—

Four kinds of lunacy.

First,—Idiots; who are of *non sane* memory from their nativity, by a perpetual infirmity. (1 *Inst.* 247; *Bac. Ab. Idiot* (A).)

Secondly,—Those that lose their memory and understanding by the visitation of God, as by sickness or other accident.

Thirdly,—Lunatics, who have sometimes their understanding and sometimes not.

Fourthly,—Drunkards (*a*), who, by their own vicious act, for a time

18 Vict. c. 13; and where the property is of small amount, 25 & 26 Vict. c. 86, ss. 12–15. By 16 & 17 Vict. c. 70, ss. 108–112, provisions are made as to the *copyhold* estates of lunatics; sects. 113–115 relate to the surrender and acceptance of renewals of *leases* by the committees of lunatics under orders of the Lord Chancellor, and such committees, under the like orders, may dispose of undesirable leases (sect. 127), and may make leases and underleases (sects. 129–135; and see 18 Vict. c. 13). The property of lunatics may be sold, mortgaged, or otherwise disposed of by the Lord Chancellor, and the proceeds applied for certain purposes (sects. 116–121, and 25 & 26 Vict. c. 86, ss. 12–15). Committees by order of the Lord Chancellor may sell, mortgage, let, and dispose of land in pursuance of contracts entered into prior to the lunacy (sect. 122), and may convey partnership property on a dissolution ordered by the Lord Chancellor (sect. 123). By order of the Lord Chancellor, committees may also sell undivided shares of land, make partitions and exchanges (sect. 124), may sell lands for building purposes (sect. 125), and dispose of business premises (sect. 126), and may make certain agreements (sect. 128), and exercise powers vested in lunatics (sects. 136–138). Provisions for the transfer of stock vested in lunatics are made by the same Act (sects. 140–144).

To make a will it is not sufficient that the testator have memory to answer to familiar and usual questions, but he ought to have a disposing memory, so as to be able to make a disposition of his estate with understanding and reason. (6 *Rep.* 23). But

a will made during a lucid interval is valid (1 *Phil. Ecc. Ca.* 90); and a will well executed shall not be set aside, or the testator considered *non compos mentis*, on account of the dispositions therein being imprudent or unaccountable. (*Burr v. Duvall*, 8 *Mod.* 59.)

(a) Drunkards, where the drunkenness is voluntary, shall have no privilege by their want of sound mind; but shall have the same judgment for their crimes as if they were in their right senses. (1 *Inst.* 247; 1 *Hawk.* c. 1, s. 6; 1 *Hale*, 32.) If, however, by indulgence in habits of intoxication a person has become the subject of habitual and fixed insanity, he is not liable to be punished for any crime perpetrated under the influence of such insanity. (1 *Hale*, 32.)

Drunkards' liability for crimes.

It was held by *Hobroyd, J.*, that where, as on a charge of murder, the material question is, whether an act was premeditated or done only with sudden heat and impulse, the fact of the party being intoxicated is a circumstance proper to be taken into consideration. (*R. v. Grindley*, 1 *Russ. C. & M. by Greaves*, 12, 4th edit.) But, according to *Rea v. Carroll*, 7 *C. & P.* 145, that case is not law.

In the words of *Patteson, J.* (*Reg. v. Cruise*, 8 *C. & P.* 541), "although drunkenness is no excuse for any crime whatever, yet it is often of very great importance in cases where it is a question of *intention*. A person may be so drunk as to be utterly unable to form any intention at all, and yet he may be guilty of very great violence." Thus, where the prisoner was indicted for attempting to commit suicide, and it appeared that she had thrown herself into a well,

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deprive themselves of their memory and understanding. (See *Wheeler v. Alderson*, 3 *Hagg.* 602.)

Idiots and lunatics, who are under a natural disability of distinguishing between good and evil, are not punishable for their crimes. (1 *Hawk.* c. 1, s. 1; 4 *Coke*, 125; *Co. Lit.* 247, a.)

But if a lunatic, or other person who wants discretion, commit a trespass against the person or possession of another, he shall be compelled, in a civil action, to give satisfaction for the damage. (1 *Hawk.* c. 1, s. 5.) As to his liability for contracts, and that he is liable for necessities, see *Baxter v. Earl Portsmouth*, 5 *B. & C.* 170; 2 *C. & P.* 178; 7 *D. & R.* 614, *S. C.*; *Wentworth v. Tubb*, 1 *Young & C., N. C.* 171; and see *Brown v. Jodrell*, 3 *C. & P.* 30; 1 *M. & M.* 105, *S. C.*; and *Levy v. Baker*, 1 *M. & M.* 106, n.; *Nelson v. Duncombe*, 9 *Beav.* 211; *Dane v. Kirkwall*, 8 *C. & P.* 679; *Molton v. Camroux*, 2 *Ex.* 487, 503; affirmed in *Cam. Scav.*, 4 *Ex.* 17; and *Beavan v. M'Donnell*, 9 *Ex.* 309.

He who incites a madman to do a murder or other crime is a principal offender, and as much punishable as if he had done it himself. (1 *Hawk.* c. 31, s. 7; 1 *East*, *P. C.* c. 5, s. 14, p. 228; 1 *Russ. C. & M.* 669.)

It is said, *per Tracy, J.*, in *R. v. Arnold*, (16 *Howell's St. Tri.* 764), that it is not every frantic and idle humour of a man that will exempt him from justice and the punishment of the law. When a man is guilty of a great offence, it must be very plain and clear before a man is allowed such an exemption; therefore, it is not every kind of frantic humour, or something unaccountable in a man's actions, that points him out to be such a madman as to be exempted from punishment. It must be a man that is totally deprived of his understanding and memory, and doth not know what he is doing, no more than an infant, than a brute, or a wild beast; such an one is never the object of punishment.

And *per Yorke*, Solicitor-General, in *Lord Ferrer's case* (19 *Howell's St. Tri.* 947, 948.) If there be a total permanent want of reason, it will acquit the prisoner. If there be a total permanent want of it, when the offence was committed, it will acquit the prisoner. But, if there be only a partial degree of insanity, mixed with a partial degree of reason; not a full and complete use of reason, but (as Lord Hale carefully and emphatically expresses himself) a competent use of it, sufficient to have

and the witness who proved this stated that at the time she did so she was so drunk as not to know what she was about, *Jervis, C. J.*, said, "If the prisoner was so drunk as not to know what she was about, how can you say that she intended to destroy herself?" (*Reg. v. Moore*, 3 *C. & K.* 319.) So also if a man used a stick, a jury would not infer a malicious intent so strongly against him if drunk when he made an intemperate use of it as they would if he had used a different kind of weapon; but where a dangerous instrument was used, which, if used, must produce grievous bodily harm, drunkenness could have no effect on the consideration of the malicious intent of the party. (*R. v. Meakin*, 7 *C. & P.* 297; *R. v. Cruse*, 8 *C. & P.* 546.) Drunkenness may also be taken into consideration in cases where what the law deems sufficient provocation has been given, because

the question in such cases is, whether the fatal act is to be attributed to the passion of anger excited by the previous provocation, and that passion is more easily excitable in a person when in a state of intoxication than when he is sober. (*R. v. Thomas*, 7 *C. & P.* 817; *R. v. Pearson*, 2 *Lewin*, 144.) But if there is really a previous determination to resent a slight affront in a barbarous manner, the state of drunkenness in which the prisoner was ought not to be regarded. (*Id.*)

Upon an indictment for stabbing the jury may take into consideration, among other circumstances, the fact of the prisoner being drunk at the time, in order to determine whether he acted under a *bonâ fide* apprehension that his person or property was about to be attacked. (*R. v. Marshall*, 1 *Lewin*, 76; *R. v. Goodier, Id.*; *Reg. v. Gamlen*, 1 *F. & F.* 90; 1 *Russ. C. & M. by Greaves*, 12, 4th edit.)

restrained those passions which produced the crime; if there be thought and design; a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then upon the fact of the offence proved, the judgment of the law must take place.

Where, on an indictment for murder, it appeared that the defendant laboured under a notion that the inhabitants of Hadleigh, and particularly the deceased, were continually issuing warrants against him with intent to deprive him of his life and liberty, Lord *Lyndhurst*, C.B., told the jury that "they must be satisfied, before they could acquit the prisoner on the ground of insanity, that he did not know when he committed the act what the effect of it, if fatal, would be with reference to the crime of murder. The question was, did he know that he was committing an offence against the laws of God and nature?" (*R. v. Offord*, 5 C. & P. 168.)

In *R. v. Oxford*, for shooting at the Queen, Lord *Denman*, C.J., told the jury, "Persons *prima facie* must be taken to be of sound mind till the contrary is shown. But a person may commit a criminal act, and not be responsible. If some controlling disease was, in truth, the acting power within him which he could not resist, then he will not be responsible. It is not more important than difficult to lay down the rule by which you are to be governed." "On the part of the defence it was contended, that the prisoner was not *compos mentis*, that is (as it has been said), unable to distinguish right from wrong, or, in other words, that, from the effect of a diseased mind, he did not know at the time that the act he did was wrong." "Something has been said about the power to contract and to make a will. But I think that those things do not supply any test. The question is, whether the prisoner was labouring under that species of insanity which satisfies you that he was quite unaware of the nature, character, and consequences of the act he was committing, or, in other words, whether he was under the influence of a diseased mind, and was really unconscious, at the time he was committing the act, that it was a crime?" (*Reg. v. Oxford*, 9 C. & P. 525.)

The case of *R. v. M'Naughten* gave rise to a discussion on the subject of insanity as a defence in the House of Lords, and the following questions were propounded to the judges, in relation to the law respecting alleged crimes committed by persons afflicted with insane delusion:—

Insanity, when  
a defence.

"1st. What is the law respecting alleged crimes committed by persons afflicted with insane delusion in respect of one or more particular subjects or persons; as for instance, where, at the time of the commission of the alleged crime, the accused knew he was acting contrary to law, but did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit?"

"2nd. What are the proper questions to be submitted to the jury when a person, alleged to be afflicted with insane delusion, respecting one or more particular subjects or persons, is charged with the commission of a crime (murder, for example), and insanity is set up as a defence?"

"3rd. In what terms ought the question to be left to the jury as to the prisoner's state of mind at the time when the act was committed?"

"4th. If a person, under an insane delusion as to the existing facts, commits an offence in consequence thereof, is he thereby excused?"

"5th. Can a medical man, conversant with the disease of insanity, who never saw the prisoner previously to the trial, but who was present during the whole trial, and the examination of all the witnesses, be asked his opinion as to the state of the prisoner's mind at the time of the commission of the alleged crime, or his opinion whether the prisoner was conscious, at the time of doing the act, that he was acting contrary to law, or whether he was labouring under any and what delusion at the time?"

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To these questions the judges (with the exception of *Maule, J.*, who gave on his own account a more qualified answer) answered as follows :—

Effect of delu-  
sions.

To the first question :—"Assuming that your lordships' inquiries are confined to those persons who labour under such partial delusions only, and are not in other respects insane, we are of opinion that, notwithstanding the party did the act complained of with a view, under the influence of insane delusion, of redressing or revenging some supposed grievance or injury, or of producing some public benefit, he is nevertheless punishable, according to the nature of the crime committed, if he knew, at the time of committing such crime, that he was acting contrary to law, by which expression we understand your lordships to mean the law of the land."

Question for the  
jury.

To the second and third questions :—"That the jury ought to be told in all cases that every man is presumed to be sane, and to possess a sufficient degree of reason to be responsible for his crimes, until the contrary be proved to their satisfaction; and that, to establish a defence on the ground of insanity, it must be clearly proved that, at the time of the committing of the act, the party accused was labouring under such a defect of reason, from disease of the mind, as not to know the nature and quality of the act he was doing, or, if he did know it, that he did not know he was doing what was wrong. The mode of putting the latter part of the question to the jury on these occasions has generally been, whether the accused, at the time of doing the act, knew the difference between right and wrong, which mode, though rarely, if ever, leading to any mistake with the jury, is not, as we conceive, so accurate when put generally, and in the abstract, as when put to the party's knowledge of right and wrong in respect to the very act with which he is charged. If the question were to be put as to the knowledge of the accused, solely and exclusively with reference to the law of the land, it might tend to confound the jury, by inducing them to believe that an actual knowledge of the law of the land was essential in order to lead to a conviction, whereas the law is administered upon the principle that every one must be taken conclusively to know it, without proof that he does know it. If the accused was conscious that the act was one which he ought not to do, and if that act was at the same time contrary to the law of the land, he is punishable; and the usual course, therefore, has been to leave the question to the jury, whether the party accused had a sufficient degree of reason to know that he was doing an act that was wrong; and this course, we think, is correct, accompanied with such observations and explanations as the circumstance of each particular case may require."

To the fourth question :—"The answer to this question must of course depend on the nature of the delusion; but making the same assumption as we did before, that he labours under such partial delusion only, and is not in other respects insane, we think he must be considered in the same situation as to responsibility as if the facts with respect to which the delusion exists were real. For example, if under the influence of his delusion he supposes another man to be in the act of attempting to take away his life, and he kills that man, as he supposes, in self-defence, he would be exempt from punishment. If his delusion was that the deceased had inflicted a serious injury to his character and fortune, and he killed him in revenge for such supposed injury, he would be liable to punishment."

And to the last question :—"We think the medical man, under the circumstances supposed, cannot in strictness be asked his opinion in the terms above stated, because each of those questions involves the determination of the truth of the facts deposed to, which it is for the jury to decide; and the questions are not mere questions upon a matter of science, in which case such evidence is admissible. But where the facts

are admitted or not disputed, and the question becomes substantially one of science only, it may be convenient to allow the question to be put in that general form, though the same cannot be insisted on as a matter of right."

It will be useful to notice, the cases which have occurred since this decision. In *R. v. Layton* (4 *Cox's C. C.* 149), *Rolfe*, B., said,— "Where a prisoner sets up insanity as a ground of defence, one cardinal rule is, that the burden of proving his innocence on that ground rests on the party accused. The question in such a case for the jury is not whether the prisoner was of sound mind, but whether he had made out to their satisfaction that he was not of sound mind. The jury may come to a conclusion on this point from the conduct and acts of the accused shortly before and down to the commission of the alleged crime." His lordship also laid down that, although insanity on one point, for instance, a delusion as to property, will not exempt a party from responsibility, the fact is not immaterial in considering his responsibility at another time and on another subject. The want of motive for the commission of the crime, and its being committed under circumstances which render detection inevitable, are important points for the consideration of the jury, when coupled with evidence of insanity on any particular point. His lordship refused to allow a witness to be asked whether in his opinion the prisoner was capable of judging between right and wrong.

On a trial for murder before *Alderson*, B., evidence was called on the prisoner's behalf to prove his insanity. A physician, who had been in court during the whole trial, was then called on the part of the prosecution, and asked whether, having heard the whole evidence, he was of opinion that the prisoner, at the time he committed the alleged act, was of unsound mind. His lordship, notwithstanding the opinion of the judges in *R. v. McNaughten* (1 *C. & K.* 130), held, that such a question ought not to be put, but that the proper mode of examination was to take particular facts, and, assuming them to be true, to ask the witness whether in his judgment they were indicative of insanity on the part of the prisoner at the time the alleged act was committed. (*R. v. Francis*, 4 *Cox's C. C.* 57.) *Parke*, B., in one case, held, that a mere uncontrollable impulse of the mind, coexisting with the full possession of the reasoning powers, will not warrant an acquittal on the ground of insanity, the question for the jury being whether the prisoner at the time he committed the act, knew the character and nature of the act, and that it was a wrongful one. (*R. v. Barton*, 3 *Cox's C. C.* 275.)

The other principal cases in which the question as to what amount of insanity would excuse a crime, are those of *R. v. Parker*, *Collison on Lunacy*, 477; *R. v. Bowler*, *Id.* 673; *R. v. Bellingham*, *Id.* Addenda, 636; *R. v. Hadfield*, *Id.* 480; 1 *Russ. C. & M.*, by *Greaves*, 14, 4th edition.

It is observed in 1 *Russell on Crimes and Misdemeanours*, by *Mr. Greaves*, p. 28, 4th edit., that "the application of the rules and principles laid down in these cases to each particular case as it may arise will necessarily, in many instances, be attended with difficulty; more especially with regard to the true interpretation of the expressions which state that the prisoner, in order to be a proper subject of exemption from punishment on the ground of insanity, should appear to have been unable 'to distinguish right from wrong,' or to discern 'that he was doing a wrong act,' or should appear to have been 'totally deprived of his understanding and memory;' as, even in *Hadfield's case*, his expressions, when apprehended, that 'he was tired of life,' that 'he wanted to get rid of it,' and that 'he did not intend any thing against the life of the King, but knew that the attempt only would answer his purpose,' seem to show that he must have been aware that he was doing a wrong act, though the degree of his criminality might have been but imperfectly presented to him through the morbid delusion by which his senses and

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understanding were affected. But it is clear that idle and frantic humours, actions occasionally unaccountable and extraordinary, mere dejection of spirits, or even such insanity as will sustain a commission of lunacy, will not be sufficient to exempt a person from punishment who has committed a criminal act. And it seems that, though, if there be a total permanent want of reason, or if there be a total temporary want of it when the offence was committed, the prisoner will be entitled to an acquittal, yet, if there be a partial degree of reason, 'a competent use of it, sufficient to have restrained those passions which produced the crime; if there be thought and design, a faculty to distinguish the nature of actions, to discern the difference between moral good and evil; then, upon the fact of the offence proved, the judgment of the law must take place.' " (*Per Yorke, Solicitor-General, ubi supra; et per Lawrence, J., R. v. Allen, Stafford Lent Assizes, 1807, M. S.*)

Becoming insane  
before trial, or  
judgment, or  
execution.

By the common law, if a man in his sound memory commits a capital offence, and before arraignment for it, he becomes mad, he ought not to be arraigned for it, because he is not able to plead to it with that advice and caution that he ought. And if, after he has pleaded, the prisoner becomes mad, he shall not be tried; for how can he make his defence? If, after he be tried and found guilty, he loses his senses before judgment, judgment shall not be pronounced; and if after judgment he becomes of non-sane memory, execution shall be stayed. (1 *Hale, C. P.* 34; 4 *Bla. Com.* 24.)

How tried  
whether defend-  
ant insane.

By the common law, if it be doubtful whether a criminal, who, at his trial, in his appearance is a lunatic, be such in truth or not, it shall be tried by the jury who are charged to try the indictment (*Bac. Ab. "Idiot,"* (B.); *R. v. Ley, 1 Lewin, 239; 1 Russ. C. & M. 29, 4th edit.*), by an inquest of office, to be returned by the sheriff of the county wherein the Court sits (*Id., 1 Hawk. P. C. c. 1, s. 4*): or, being a collateral issue, the fact may be pleaded and replied to *ore tenus*, and a venire awarded, returnable *instantly*, in the nature of an inquest of office. (*Fost. 46, 1 Lev. 61; 1 Russ. C. & M. 29, 4th edit.*) If it be found by the jury that the party only feigns himself lunatic, and he still refuse to answer, he was, before the 7 & 8 Geo. 4, c. 28, s. 2, dealt with as one who stood mute, and as if he had confessed the indictment; but now, by virtue of that enactment (which see, tit. "*Mute,*" *post*), a plea of not guilty may be pleaded. The principal point to be considered by the jury would be, whether the defendant was of sufficient intellect to comprehend the course of the proceedings on the trial, so as to be able to make a proper defence. (See *R. v. Pritchard, 7 C. & P. 303, 305.*)

Jury to decide  
on insanity.

Whether the prisoner were sane or insane at the time the act was committed, is a question of fact triable by the jury, and dependent upon the previous and contemporaneous acts of the party. (*R. v. Haswell, R. & R. 458.*)

On a trial, where the defence is insanity, a witness of medical skill may be asked whether such-and-such appearances (proved by the other witnesses) are symptoms of insanity. But it appears that he cannot be asked, whether, from the other testimony given in the case, the act, as to which the prisoner was charged, was an act of insanity; as that is the very point to be decided by the jury. (*R. v. Wright, R. & R. 456; R. v. Searle, 1 M. & Rob. 75; R. v. Frances, 4 Cox's C. C. 57.*)

A prisoner was defended by counsel, who set up for him the defence of insanity. The prisoner, however, objected to such a defence, asserting that he was not insane; and he was allowed by the judge to suggest questions, to be put by the learned judge to the witnesses for the prosecution, to negative the supposition that he was insane; and the judge also, at the request of the prisoner, allowed additional witnesses to be called on his behalf for the same purpose. They, however, failed in showing that the defence was an incorrect one; and, on the contrary,

their evidence tended to establish it more clearly; and the prisoner was acquitted on the ground of insanity. (*R. v. Pearce*, 9 *C. & P.* 667.)

The 39 & 40 Geo. 4, c. 94, intituled "An Act to Provide for the Safe Custody of Insane Persons charged with Offences" (28th July, 1800), enacts (sect. 1) "that in all cases where it shall be given in evidence upon the trial (*a*) of any person charged with treason, murder, or felony (*b*), that such person was insane at the time of the commission of such offence, and such person shall be acquitted (*c*), the jury shall be required to find specially whether such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the Court before whom such trial shall be had, shall order such person to be kept in strict custody, in such place and in such manner as to the Court shall seem fit, until his Majesty's pleasure shall be known; and it shall thereupon be lawful for his Majesty to give such order for the safe custody of such person, during his pleasure, in such place and in such manner as to his Majesty shall seem fit (*d*); and in all cases where any person, before the passing of this Act, has been acquitted of any such offences on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the Court before whom such person has been tried, and still remains in custody, it shall be lawful for his Majesty to give the like order for the safe custody of such person (*d*), during his pleasure, as his Majesty is hereby enabled to give in the cases of persons who shall hereafter be acquitted on the ground of insanity."

Sect. 2. That if any person indicted for any offence (*e*) shall be insane, and shall upon arraignment be found so to be by a jury (*f*) lawfully im-

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How prisoners acquitted on ground of insanity to be disposed of.

When found insane on arraignment on trial.

(*a*) A grand jury have no authority by law to ignore a bill on the ground of insanity, though it appear clearly, from the testimony of the witnesses, as examined by them on the part of the prosecution, that the accused was in fact insane; but if they believe that the acts, if they had been done by a person of sound mind, would have amounted to the crime charged, it is their duty to find the bill. Otherwise the Court cannot order the detention of the party during the pleasure of the Crown, as it can either on arraignment or trial under the above statute. (*R. v. Hodges*, 8 *C. & P.* 195.)

(*b*) The 3 & 4 Vict. c. 54, s. 3, *post*, 592, contains a similar provision as to persons charged with misdemeanours.

(*c*) If the jury are of opinion that the prisoner did not in fact do all that the law deems essential to constitute the offence charged, it seems that they must find him not guilty generally; and that the Court has no power in such a case to order his detention under the statute, although the jury should be clearly of opinion that the prisoner was in fact insane. (*R. v. Oxford*, 9 *C. & P.* 525.)

(*d*) By 23 & 24 Vict. c. 75, *post*, her Majesty is empowered by warrant to appoint asylums for criminal

lunatics (sect. 1); and a secretary of state may direct criminal lunatics to be removed to and kept in any such asylum (sect. 2).

(*e*) This section applies to all offences, as well to misdemeanours as felonies. (*R. v. Little*, *R. & R.* 430.)

(*f*) The question for the jury under this section is whether the prisoner has sufficient intellect to comprehend the course of the proceedings, so as to make a proper defence, to challenge any juror he may wish to object to, and to comprehend the details of the evidence; if they think he has not they should find him insane. (*R. v. Pritchard*, 7 *C. & P.* 303; *R. v. Dyson*, *ib.* 305 n. (*a*).) Where a prisoner, upon his arraignment showed symptoms of insanity, and an inquest was forthwith taken under the above section, it was held that the jury might form their judgment of the state of his mind from his demeanour while the inquest was being taken, and might thereupon find him to be insane without any evidence being given as to his present state; and that it was unnecessary to ask him whether he would cross-examine the witnesses, or offer any remarks or evidence. (*R. v. Goode*, 7 *Ad. & E.* 536.) The following was the oath



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panelled for that purpose, so that such person cannot be tried upon such indictment, or if upon the trial of any person so indicted such person shall appear to the jury charged with such indictment to be insane, it shall be lawful for the Court before whom any such person shall be brought to be arraigned or tried as aforesaid, to direct such finding to be recorded, and thereupon to order such person to be kept in strict custody until his Majesty's pleasure shall be known; and if any person charged with any offence shall be brought before any Court to be discharged for want of prosecution, and such person shall appear to be insane, it shall be lawful for such Court to order a jury to be impanelled to try the insanity of such person, and if the jury so impanelled shall find such person to be insane, it shall be lawful for such Court to order such person to be kept in strict custody, in such place and in such manner as to such Court shall seem fit, until his Majesty's pleasure shall be known; and in all cases of insanity so found, it shall be lawful for his Majesty to give such order for the safe custody of such person so found to be insane, during his pleasure, in such place and in such manner as to his Majesty shall seem fit (a).

1 Vict. c. 14.

The 1 Vict. c. 14, intituled, "An Act to repeal so much of an Act of the Thirty-ninth and Fortieth years of King George the Third as authorizes Magistrates to commit to Gaols or Houses of Correction Persons who are apprehended under Circumstances that denote a Derangement of Mind and a purpose of committing a Crime; and to make other Provisions for the safe Custody of such Persons" (30th March, 1838), reciting that, by the 39 & 40 Geo. 3, c. 94, s. 3, it was amongst other things enacted (sect. 1), "That, if any person should be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, and any of his Majesty's justices of the peace before whom such person may be brought shall think fit to issue a warrant for committing him or her as a dangerous person suspected to be insane, such cause of commitment being plainly expressed in the warrant, the person so committed shall not be bailed except by two justices of the peace, one whereof shall be the justice who has issued such warrant, or by the Court of general quarter sessions, or by one of the judges of his Majesty's Courts in Westminster Hall, or by the Lord Chancellor, Lord Keeper, or commissioners of the Great Seal;" enacts, "That so much of the said Act as is hereinbefore recited shall be and is hereby repealed."

Repeal of 39 &  
40 Geo. 3, c. 94,  
s. 3.

Persons in cus-  
tody under re-  
pealed provisions  
of that Act, or  
hereafter appre-  
hended as insane  
or dangerous  
idiots, may be  
sent to lunatic  
asylums.

Sect. 2. That in all cases where any person shall be in custody at the time of the passing of this Act under or by virtue of any warrant for commitment made or issued by any of her Majesty's justices of the peace under the authority of the said hereinbefore recited provisions of the said Act of the thirty-ninth and fortieth years of his late Majesty King George the Third, and hereby repealed, and if at any time after the passing of this Act any person shall be discovered and apprehended under circumstances that denote a derangement of mind and a purpose of committing some crime for which, if committed, such person would be liable to be indicted, it shall and may be lawful for any two justices of the peace of the county, city, borough, or place where such person shall be so kept in custody or apprehended, to call to their assistance a physician, surgeon, or apothecary, and if, upon view and examination of the said person so in custody or apprehended, or from other proof, the said justices shall be satisfied that such person is insane or a dangerous idiot,

administered to the jury in that case:  
—"You shall diligently inquire and true presentment make for and on behalf of our sovereign lady the Queen, whether J. G., the defendant,

be insane or not, and a true verdict give according to the best of your understanding. So help you God."  
(*Ib.* 537.)

(a) See note (d) on preceding page.

the said justices, if they shall so think fit, by an order (a) under their hands and seals, directed to the keeper of the gaol or house of correction, if in custody at the time of passing this Act, or if hereafter apprehended, to the constable or overseers of the poor of the parish, township, or place where such person shall be apprehended, shall cause the said person to be conveyed to and placed in the county lunatic asylum, provided there be one situated within or belonging to the county in which such person shall be in custody at the time of passing this Act, or shall be hereafter apprehended, and if there be no such asylum, then to some public hospital, or some house duly licensed for the reception of insane persons; and it shall be lawful for the said justices to inquire into and ascertain, by the best legal evidence that can be procured under the circumstances of personal legal disability of such insane person or dangerous idiot, the place of the last legal settlement of such person; and it shall and may be lawful for such two justices to make an order (b) under their hands and seals upon the overseers or churchwardens of such parish, township, or place where they adjudge him or her to be legally settled, to pay all reasonable charges of examining such person, and conveying him or her to such county lunatic asylum, public hospital, or licensed house, and to pay such weekly sum for his or her maintenance in such place of custody as they or any two justices shall, by writing under their hands, from time to time direct, and where such place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been in custody or apprehended: Provided always, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from taking such insane person or dangerous idiot under their own care and protection, if he shall enter into sufficient recognizance for his or her peaceable behaviour or safe custody, before two justices of the peace, or the Court of quarter sessions, or one of the judges of her Majesty's Courts in Westminster Hall: Provided always, that the churchwardens and overseers of the parish in which the justices shall adjudge any insane person or dangerous idiot to be settled may appeal against any such order to the next general quarter sessions of the peace to be holden for the county where such order shall be made, in like manner and under like restrictions and regulations as against any order of removal, giving reasonable notice thereof to the clerk of the peace of the county, riding, or division, or to the town clerk of the city, borough, or place, as the case may be, upon whose rates the burden of maintaining such insane person or dangerous idiot might fall, if such order should be invalid, and such clerk of the peace (c) or town clerk shall be respondent in such ap-

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Justices may inquire into settlement of lunatics or dangerous idiots, and make order for payment of their maintenance, etc.

If settlement cannot be ascertained.

Nothing herein to prevent relations from taking lunatics under their own care.

Appeal.

(a) A commitment of an insane person under the 39 & 40 Geo. 3, c. 94, s. 3 (repealed by this Act), was held not a commitment in execution, and is, therefore, not to be construed with the same strictness. Therefore, a warrant, stating that A. B. had been discovered and apprehended, under circumstances that denoted a derangement of mind and a purpose of committing some crime, for which, if committed, he would be liable to be indicted, to wit, an assault, and that the said A. B. being brought before the justice, was committed by him, was held sufficient, though it did not state the name of the person whom the prisoner intended to assault, and it did not appear that the committing magistrate received any

evidence upon oath. (*R. v. Gowlay*, 7 B. & C. 669; 1 M. & R. 619.)

(b) This order need not be made at the time of sending the pauper to the asylum, but may be made at a future time. The inability of the magistrates to ascertain the settlement at once will not exonerate the parish, and impose on the county the burden of the future maintenance of the pauper. (*R. v. West Riding of Yorkshire*, 20 L. J., M. C. 18; *R. v. Elstey*, 15 Q. B. 1025, S. C.)

(c) As there cannot be a respondent until there is an appeal, the clerk of the peace has no duties towards the parish upon which the order of maintenance is made, until an appeal; and the notice of chargeability and other documents relating to the settlement

1. *How far  
liable for  
Crimes, etc.*

peal, which appeal the justices of the peace assembled at the said general quarter sessions are hereby authorized and empowered to hear and determine, in the same manner as appeals against orders of removal are now heard and determined.

Persons proved  
not to be insane  
may be liberated.

Sect. 3. That if upon examination it shall appear to the physician, surgeon, or apothecary present at the examination of any person in custody at the time of passing this Act as aforesaid, that he or she is not an insane person or a dangerous idiot, and that such person may be suffered to go at large with safety, it shall and may be lawful for such medical person, and he is hereby required to give a certificate to that effect, signed by him, to the visiting justices of the gaol or house of correction in which such person is in custody, who are hereby required to transmit the same forthwith to her Majesty's principal secretary of state for the home department, who, if he shall so think fit shall order the liberation of such person from custody.

Act not to alter  
laws relating to  
the discharge of  
recovered lunatics.

Sect. 4. That nothing herein contained, except where otherwise expressly mentioned, shall alter the laws relating to the discharge of persons who may cease to be insane or dangerous idiots, from any county lunatic asylum, public hospital, or house duly licensed for the reception of insane persons, nor authorize the removal by any parish officer of any poor person from such asylum, public hospital, or licensed house, without an order for that purpose made by two justices of the peace for the county in which such house shall be situated, after due inquiry into the circumstances of the case, unless such person shall have been discharged as cured.

Act extends only  
to England and  
Wales.  
3 & 4 Vic. c. 54.

Sect. 5. That this Act shall extend only to England and Wales.

The 3 & 4 Vict. c. 54, intituled, "An Act for making further Provision for the Confinement and Maintenance of Insane Prisoners" (4th August, 1840), enacts by

Prisoners be-  
coming insane  
after conviction.

Sect. 1. [Prisoners becoming insane, two justices may inquire; if certified to be insane, secretary of state to grant warrant for removal to lunatic asylum. How to be dealt with, if afterwards sane. Warrant for removal back to prison or to discharge] (a).

Justices to in-  
quire into the  
settlement of  
such prisoner,  
and make orders  
on parish for  
maintenance,  
etc.

Sect. 2. That in all such cases as aforesaid, unless one of her Majesty's principal secretaries of state shall otherwise direct, it shall be lawful for such two justices, or any other two justices of the peace of the county, city, borough, or place where such person is imprisoned, to inquire into and ascertain, by the best evidence or information that can be obtained under the circumstances of the personal legal disability of such insane person, the place of the last legal settlement, and the pecuniary circumstances of such person; and if it shall not appear that he or she is possessed of sufficient property which can be applied to his or her maintenance, it shall be lawful for such two justices, by order (b) under

are properly sent to the appellants, and the complaint on which the order of maintenance is founded is well made, by the treasurer of the asylum to which the insane person is sent. (*R. v. West Riding of Yorkshire, ubi supra.*)

(a) This section is repealed by 27 & 28 Vict. c. 29, s. 1, *post*; which (sect. 2) contains provisions for effecting the same purposes.

(b) An order directing a weekly payment to be made by the guar-

dians of a union for the maintenance of a criminal lunatic, whose settlement was adjudged to be in one of the parishes of such union, need not in terms direct the payment to be made on behalf of such parish if the order recites all the facts necessary to establish the liability of such parish. (*Reg. v. Berkshire JJ.*, 3 *N. Sess. Ca.* 473; 18 *L. J. (N. S.)*, *M. C.* 105.)

H. L. having been convicted of

their hands, to direct the overseers of the parish where they adjudge him or her to be lawfully settled, or in case such parish be comprised in a union declared by the poor law commissioners, or shall be under the management of a board of guardians established by the poor law commissioners, then the guardians of such union (a), or of such parish (as the case may be), to pay on behalf of such parish, in the case of any person removed under this Act, all reasonable charges for inquiring into such person's insanity, and for conveying him or her to such county lunatic asylum or receptacle for insane persons, and to pay such weekly sum as they or any two justices shall, by writing under their hands, from time to time direct, for his or her maintenance in such asylum or receptacle in which he or she shall be confined; and in the case of any person removed under any former Act relating to insane prisoners, to pay such weekly sum as they or any two such justices as aforesaid shall, by writing under their hands, from time to time direct, for his or her maintenance in the asylum or receptacle in which he or she is confined; and when the place of settlement cannot be ascertained, such order shall be made upon the treasurer of the county, city, borough, or place where such person shall have been imprisoned; but if it shall appear, upon inquiry, to the said or any other two justices of the county, city, borough, or place where such person is imprisoned, that any such person is possessed of property, such property shall be applied for or towards the expenses incurred or to be hereinafter incurred on his or her behalf, and they shall from time to time, by order under their hands, direct the overseers (a) of any parish where any money or securities for money, goods,

1. *How far liable for Crimes, etc.*

When settlement not found, order to be made on treasurer of county.

In case the person is possessed of property, it shall be applied towards the expense.

felony at the Wilts Lent Assizes, 1864, and sentenced to twelve months' imprisonment, was accordingly imprisoned in the county gaol, situate in the borough of Devizes, which has its own exclusive jurisdiction. While undergoing his sentence he became insane, and, by an order of the secretary of state, under 3 & 4 Vict. c. 54, s. 1, he was removed to a licensed asylum in another county on the 25th of June, 1864. On the 28th of March, 1867, two justices of Wilts, sitting in the borough of Devizes, and purporting to act under sect. 2, after adjudging the settlement of H. L. to be in the parish of B. in the B. union, ordered the guardians of the union to pay to the keeper of the gaol the reasonable charges of the inquiry into the insanity of H. L., and of his removal to the asylum, and to pay to the keeper of the asylum £114, being the aggregate amount of the weekly charges for the maintenance in the asylum from the 25th of June, 1864, to the 24th of March, 1867; and a further weekly sum of 16s. from the latter date. Held, first, that the order was not invalid by reason of its having been made after the expiration of the term of the lunatic's imprisonment; secondly, that the justices for the county had jurisdiction to make the order (though relating to a lunatic) while sitting in the borough, by reason of 11 & 12 Vict. c. 42, and 11 & 12 Vict. c. 43,

s. 6, coupled with 26 & 27 Vict. c. 77, which so far rendered nugatory the exceptions in 11 & 12 Vict. c. 43, s. 35; thirdly, by *Cockburn, C. J.*, and *Lush, J.*, (*Blackburn, J.*, doubting) that the order was bad as to the £114, as there was nothing in the 3 & 4 Vict. c. 54, s. 2, enabling the justices to make such a retrospective order. By *Mellor, J.*, that the justices had power under sect. 2 to make an order for past maintenance, but that the order ought to be quashed, on the ground that it ought to have been applied for before. (*Bradford Union v. Clerk of the Peace for Wiltshire, Law Rep. 3 Q. B. 604; 37 L. J., M. C. 129.*)

(a) By 27 & 28 Vict. c. 29, s. 5, *post*, it is enacted that where any order shall have been, or shall thereafter be made, upon the guardians of any union formed under the provisions of 4 & 5 Will. 4, c. 76, for the payment of money under this section, the amount paid under such order shall be charged upon the common fund of the union, and not to the account of any parish therein; and the power given to the justices to order the seizure and sale of the goods and chattels, or the receipt of the rents of the lands or tenements of any insane person therein referred to, shall cease as regards the overseers, but shall apply to the guardians of the union who shall have incurred any expenses under any such order.

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chattels, lands, or tenements of such person shall be, to seize (a) so much of the said money, or to seize and sell so much of the said goods and chattels, or receive so much of the annual rent of the lands or tenements of such person, as may be necessary to pay the charges, if any, of inquiring into such person's insanity, and of removal, and also the charges of maintenance, clothing, medicine, and care of any such insane person (b), accounting for the same at the next special petty sessions of the division, city, or borough in which such order shall have been made, such charges having been first proved to the satisfaction of such justices, and the amount thereof being set forth in such order (c).

Persons charged  
with misde-  
meanours, ac-  
quitted on the  
ground of insa-  
nity, may be  
kept in custody.

39 & 40 Geo. 3,  
c. 94.

Sect. 3. And whereas it is expedient that the same provision should be made with regard to persons charged with misdemeanours as is made with regard to persons charged with treason, murder, or felony, by virtue of an Act of the thirty-ninth and fortieth years of king George the third, intituled, "An Act for the safe Custody of Insane Persons charged with Offences" (d), be it enacted, that in all cases where it shall be given in evidence upon the trial of any person charged with any misdemeanour, that such person was insane at the time of the commission of the offence, and such person shall be acquitted, the jury shall be required to find specially that such person was insane at the time of the commission of such offence, and to declare whether such person was acquitted by them on account of such insanity; and if they shall find that such person was insane at the time of the committing such offence, the court before whom such trial shall be had shall order such person to be kept in strict custody, in such place and in such manner as to the court shall seem fit, until her Majesty's pleasure shall be known; and it shall therefore be lawful for her Majesty to give such order for the safe custody of such person during her pleasure, in such place and in such manner as to her Majesty shall seem fit (e); and in all cases where any person before the passing of this Act has been acquitted of any such offence on the ground of insanity at the time of the commission thereof, and has been detained in custody as a dangerous person by order of the court before whom such person has been tried, and still remains in custody, it shall be lawful for her Majesty to give the like order for the safe custody of such person during her pleasure, as her Majesty is hereby enabled to give in the case of any person who shall hereafter be acquitted on the ground of insanity (e).

Persons ag-  
grieved may  
appeal from  
the order of the  
justices.

Sect. 4. Provided always, that if any person shall feel aggrieved by any order of any justices as aforesaid, such person may appeal to the justices of the peace at the next quarter sessions of the peace to be holden in and for the county, city, borough, or place where the matter of appeal shall have arisen, the person so appealing having given to the justices against whose order such appeal shall be made ten days' notice of his or her intention to make such appeal; and the said justices at such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and to make such determination as they shall think proper, and shall and may also award such further satisfaction to the party injured, or such costs to either of the

(a) The justices cannot authorize the overseers to levy a debt claimed as due to the lunatic, by ordering them to seize money in the possession of the debtor. (*R. v. Longhorn*, 17 Q. B. 77; *Re Simpson's Trust Estate, ex parte Overseers of Old Hutton*, 20 L. J., M. C. 231.)

(b) See *In re Simpson*, 15 Jur. 754.

(c) The provisions of this section apply to persons sent to any asylum

for criminal lunatics established under 23 & 24 Vict. c. 75, *post*.

(d) See 39 & 40 Geo. 3, c. 94, s. 1, and notes, *ante*, 587.

(e) By 23 & 24 Vict. c. 75, *post*, her Majesty is empowered to appoint asylums for criminal lunatics (sect. 1); and a secretary of state may direct criminal lunatics to be removed to and kept in any such asylum (sect. 2).

parties, as they shall judge reasonable and proper; and every such determination shall be final and conclusive to all intents and purposes whatsoever, and no *certiorari* shall be allowed.

1. *How far  
liable for  
Crimes, etc.*

Sect. 5. That the overseers of the parish in which the justices shall adjudge any insane person to be settled, or in case such parish be comprised in a union, or be under the management of a board of guardians, then either the guardians of such union or parish (as the case may be), or the overseers of such parish (a) may appeal against such order to the general quarter sessions of the peace to be holden for the county, city, borough, or place where such order shall be made, in like manner and under like restrictions and regulations as against any order of removal (b), giving reasonable notice thereof to the clerk of the peace of such county, city, borough, or place, who shall be respondent in such appeal, which appeal the justices of the peace assembled at the said general quarter sessions are hereby authorized and empowered to hear and determine in the same manner as appeals against orders of removal are now heard and determined.

Overseers or guardians may appeal against the order of the justices on the parish.

Sect. 6. [Repeals 55th section of 9 Geo. 4, c. 40.]

Sect. 7. And whereas by the said last-mentioned Act it was, among other things, enacted that it should be lawful for two justices of the peace of the county where any person should be kept in custody as an insane person by order of any court, or by his Majesty's order subsequent thereunto, to inquire into and ascertain the settlement and circumstances of such insane person, and to make order for the payment of such weekly sum for his or her maintenance as one of his Majesty's principal secretaries of state should, by writing under his hand, from time to time direct: And whereas it is expedient that so much of the said Act as relates to such direction to be given by such secretary of state should be repealed, and other provisions made in the place thereof: be it therefore enacted, that so much of the said Act as relates to such directions to be given by such secretary of state shall be and the same is hereby repealed; and that it shall be lawful for such two justices, by order under their hands, to direct the overseers of the parish in which they shall adjudge such insane person as last aforesaid to be legally settled, or in case such parish shall be comprised in a union declared by the poor law commissioners, or shall be under the management of a board of guardians established by the poor law commissioners, then the guardians of such union or parish, as the case may be, to pay such weekly sum for the maintenance of such person as they or any such two justices shall, by writing under their hands, direct (c).

So much of 9 Geo. 4, c. 40, s. 54, as relates to orders for the payment of money for amount of maintenance of insane prisoners, to be settled by the secretary of state, repealed.

Sect. 8. And in order to remove doubts as to the meaning of certain words in this Act, be it enacted, that the words "treasurer of the county, city, borough, or place," shall be deemed to include any officer in any county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate, who has the custody of any funds assessed upon

Rules for interpretation of this Act.

(a) By 27 & 28 Vict. c. 29, s. 6, *post*, 599, so much of this section as enabled the overseers of any parish in a union to appeal against an order of justices adjudicating as to the settlement of any insane person is repealed.

(b) The time allowed for guardians of a poor law union to appeal against an order for maintenance under this section is governed by the time of procedure allowed them in appeals against orders of removal. (*Reg. v. Guardians of the Newport Union*, 33

*L. J., N. S., M. C.* 155; 10 *Jur., N. S.* 516.)

Notice of appeal was signed "H. H., clerk to the aforesaid guardians," without stating that he was acting as their attorney, or for and on their behalf. Held, sufficiently signed. (*Ibid.*)

(c) The 9 Geo. 4, c. 40, is repealed by 8 & 9 Vict. c. 126, s. 1, but the above section appears to be still in force.

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liable for  
Crimes, etc.*

or raised in or belonging to such county, riding, division, liberty, county of a city, county of a town, cinque port or town corporate, in the nature of county rates, and applicable to the purposes to which county rates are applicable; that the words "insane person" shall be deemed to include any lunatic or dangerous idiot; and that the words "county, city, borough, or place" shall be deemed to include any county, riding, division, liberty, county of a city, county of a town, cinque port, or town corporate; and the word "parish" shall be deemed to include any township, hamlet, tithing, vill, extra-parochial place, or any place maintaining its own poor.

Limitation of  
Act.  
23 & 24 Vict.  
c. 75.

Sect. 9. That this Act shall extend only to England and Wales.

The 23 & 24 Vict. c. 75, intituled, "An Act to make better Provision for the Custody and Care of Criminal Lunatics" (6th August, 1860); after reciting that by the 39 & 40 Geo. 3, c. 94 (a), and the 3 & 4 Vict. c. 54 (b), her Majesty is empowered, where any person is charged with any such offence as therein mentioned, and acquitted on account of insanity, and where any person is indicted for any offence and upon an arraignment is found insane, to give order for the safe custody of such person during her pleasure, in such place and in such manner as she may think fit; and by the said Act of the 3 & 4 Vict. c. 54 (c), one of her Majesty's principal secretaries of state is empowered, upon such certificate as therein mentioned of the insanity of any person imprisoned as therein mentioned, to direct such person to be removed to such county lunatic asylum, or other proper receptacle for insane persons, as the said secretary of state may judge proper and appoint: and that by the 5 & 6 Vict. c. 29, and 6 & 7 Vict. c. 26, the said secretary of state is empowered to order any convict in Pentonville or Millbank Prison becoming or found insane during confinement to be removed to such lunatic asylum as the said secretary of state may think proper: and that it is expedient that provision should be made for the custody and care of criminal lunatics in an asylum or asylums appropriated for that purpose enacts:

Her Majesty may  
appoint asylum  
for criminal lu-  
natics.

Sect. 1. It shall be lawful for her Majesty from time to time, by warrant under her royal sign manual, to appoint that any asylum or place in England which her Majesty may have caused to be provided or appropriated, and may deem suitable for this purpose, shall be an asylum for criminal lunatics, and the provisions of this Act shall be applicable to every such asylum.

Secretary of  
state may direct  
criminal lunatics  
to be confined in  
the asylum.

Sect. 2. It shall be lawful for one of her Majesty's principal secretaries of state, by warrant under his hand, to direct to be conveyed to and kept in any such asylum any person for whose safe custody during her pleasure her Majesty is authorized to give order, or whom such secretary of state might direct to be removed to a lunatic asylum under any of the Acts hereinbefore mentioned (d), or under any other Act of Parliament, or any person sentenced or ordered to be kept in penal servitude, who may be shown to the satisfaction of the secretary of state to be insane, or to be unfit from imbecility of mind for penal discipline; and the secretary of state may direct to be removed to and kept in such asylum any such person as aforesaid, who, under any previous order of her Majesty or warrant of the secretary of state, may have been placed and remain in any county lunatic asylum, or other place of reception for lunatics, and every person directed by the secretary of state to be conveyed or removed to and kept in an asylum under this Act, shall be conveyed to such asylum accordingly, and shall be kept therein until lawfully removed or discharged, and that with every person so conveyed or removed there

(a) Sects. 1, 2, *ante*, 587.

(b) Sect. 3, *ante*, 592.

(c) Sect. 1, repealed by 27 & 28  
Vict. c. 29, s. 1, *post*, 597.

(d) See 39 & 40 Geo. 3, c. 94, ss.

1-2, *ante*, 587; and 3 & 4 Vict. c. 54,  
s. 3, *ante*, 592.

shall be transmitted a certificate, as set forth in Schedule A. to this Act annexed, duly filled up and authenticated, the contents of which certificate shall be transcribed into the general register to be kept in every such asylum.

Sect. 3. Nothing in this Act shall restrain or affect the authority of her Majesty, where she may so think fit, to give such other order for the safe custody of any such person as aforesaid as she might have given if this Act had not been passed, or restrain or affect the authority of the secretary of state to continue in or direct to be removed to any county asylum or other place for the reception of lunatics any of the persons aforesaid whom he might have so continued or directed to be removed if this Act had not been passed.

Sect. 4. It shall be lawful for the secretary of state from time to time to appoint any such persons as he may think fit, being not less than three in number, to be a council of supervision for any asylum under this Act, and to remove all or any of the said council, and upon the removal, death, or resignation of any member of the said council, to appoint another in his place; and also from time to time to appoint for the asylum a resident medical superintendent, a chaplain, and such other officers, assistants, and servants as he may deem necessary, and at pleasure to remove such superintendent, chaplain, officers, assistants, and servants respectively; and the secretary of state, with the approval of the commissioners of her Majesty's treasury, shall fix the salaries to be paid to the superintendent, chaplain, officers, assistants, and servants of such asylum.

Sect. 5. It shall be lawful for the secretary of state from time to time to make rules for the government and management of the asylum, and for the duties and conduct of the officers thereof, and for the care and treatment of the persons confined therein, and to subscribe a certificate that they are fit to be enforced, and such rules, when so certified, shall be binding on the council, and all officers, assistants, and servants of the asylum, and all other persons whomsoever, and all such rules shall be laid before Parliament within twenty-one days after they shall be certified, or if Parliament be not sitting then within twenty-one days after the next meeting of Parliament.

Sect. 6. Subject to the rules certified by the secretary of state under this Act, the council of supervision shall superintend and direct the management and conduct of the asylum, and the care and treatment of the lunatics confined therein; and such council or any two of them shall from time to time, as by the rules shall be provided, and at such other times as they may think fit, report in writing to the secretary of state in relation to the management and conduct of the said asylum and the condition thereof, and to any matters concerning the same; and if any person detained and confined as aforesaid shall be of a religious persuasion differing from that of the established church, a minister of such persuasion at the special request of such person or of his friends or relations shall be allowed to visit him at proper and reasonable times by application to the medical superintendent, and under such rules as may be approved of by the secretary of state, but no such person shall be compelled to attend any of the ordinances or instructions of any religious persuasion other than his own.

Sect. 7. The provisions of the Acts hereinbefore mentioned, or of any other Act for the removal or discharge of lunatics whom the said secretary of state is, under the hereinbefore mentioned Acts or any other Act now in force, authorized to direct to be removed to any lunatic asylum, shall extend and apply to any lunatic whom the secretary of state may direct to be conveyed to any asylum for criminal lunatics appointed under this Act: Provided always, that any order for removal or discharge which may now be made by the secretary of state on the certifi-

1. *How far liable for Crimes, etc.*

Nothing to affect the authority of the Crown to make other provision for the custody of a criminal lunatic.

Secretary of state to appoint council of supervision and officers for asylums.

Secretary of state to make rules for the government of the asylum.

Subject to such rules, council to superintend asylums.

Provision as to removal and discharge of lunatics.



1. *How far liable for Crimes, etc.*

cate of two physicians or surgeons may be made on the certificate of the resident medical superintendent of the asylum and any two of the council of supervision.

Sect. 8 is repealed, and new provisions substituted by the 30 & 31 Vict. c. 12, s. 6, *post*, 600.

Secretary of state may permit any lunatic to be absent from asylum on trial, etc.

Sect. 9 (*a*). Provided also, that it shall be lawful for the secretary of state by his warrant to permit any person confined in the asylum to be absent from such asylum upon trial for such period as he may think fit, or to permit any such person to be absent from such asylum upon such conditions in all respects as to the secretary of state shall seem fit, and in case any person so permitted to be absent upon trial for any period do not return at the expiration of such period, or, in case any of the conditions on which any person is so permitted to be absent be broken, the person not returning at such expiration or absent after any such condition has been broken, as the case may be, may be retaken as herein provided in the case of an escape.

Provisions of 3 & 4 Vict. c. 54, as to expenses of conveyance and maintenance to apply to this Act.

Sect. 10 (*a*). All provisions in the said Act of the third and fourth years of her Majesty (*b*) for the payment of the conveyance of such insane persons as therein mentioned to any asylum or other receptacle, and of his maintenance therein, shall extend and be applicable to the conveyance of any such person to any asylum for criminal lunatics, and his maintenance therein, and all sums payable under any order made under such provisions shall be paid and applied towards defraying or reimbursing the expenses in respect of which the same are paid, or other expenses of the asylum, as the commissioners of her Majesty's treasury may direct.

Lunatics escaping may be retaken by superintendent, etc.

Sect. 11. In case of escape of any person confined in any asylum for criminal lunatics, he may be retaken at any time by the superintendent of such asylum, or any officer or servant belonging thereto, or any person assisting such superintendent, officer, or servant in this behalf, or any other person authorized in writing in this behalf by the secretary of state or such superintendent, and conveyed to and received and detained in such asylum.

Punishment of persons for rescue or permitting escape.

Sect. 12. Any person who rescues any person ordered to be conveyed to any asylum for criminal lunatics during the time of his conveyance thereto, or of his confinement therein, and any officer or servant in any asylum for criminal lunatics, who through wilful neglect or connivance permits any person confined therein to escape therefrom, or secretes, or abets or connives at the escape of any such person, shall be guilty of felony, and being convicted thereof shall be liable to be kept in penal servitude for any term not exceeding four years, or to be imprisoned for any term not exceeding two years, with or without hard labour, at the discretion of the Court, and any such officer or servant who carelessly allows any such person to escape as aforesaid, shall, on summary conviction before two justices of such offence, forfeit any sum not exceeding twenty pounds nor less than two pounds.

Penalty on officers or servants ill-treating lunatics.

Sect. 13. Any superintendent, officer, nurse, attendant, servant, or other person employed in any asylum for criminal lunatics who strikes, wounds, ill-treats, or wilfully neglects any person confined therein, shall be guilty of a misdemeanour, and shall be subject to indictment for every such offence, and on conviction under the indictment to fine or imprisonment, with or without hard labour, or to both fine and imprisonment, at the discretion of the Court, or to forfeit for every such offence, on a sum-

(*a*) These sections are extended by (b) See 3 & 4 Vict. c. 54, s. 2, *ante*, the 30 & 31 Vict. c. 12, s. 4, *post*, 600. 590.

mary conviction thereof before two justices, any sum not exceeding twenty pounds nor less than two pounds.

Sect. 14. Two or more of the commissioners in lunacy, one at least of whom shall be a physician or surgeon, and one at least a barrister, shall, once or oftener in each year, on such day or days and at such hours of the day and for such length of time as they think fit, and also at any time when directed by the secretary of state, visit every asylum for criminal lunatics, and shall inquire as to the condition, as well mental as bodily, of the persons confined therein, or any of them, and shall also make such other inquiries as to such asylum as to them may seem proper, or as such secretary of state may direct.

1. *How far liable for Crimes, etc.*

Commissioners in lunacy to visit asylums;

Sect. 15. The commissioners in lunacy shall in the month of March in every year report to one of her Majesty's principal secretaries of state the visits made as aforesaid in the preceding year, and all such particulars in relation to every asylum visited aforesaid as they think deserving of notice, and shall also report in like manner in relation to any visit made by the direction of the secretary of state, as soon as conveniently may be after such visit, and a copy of every such report shall be laid before Parliament within twenty-one days after the receipt thereof, or if Parliament be not sitting, then within twenty-one days after the next meeting of Parliament.

and report to secretary of state.

#### SCHEDULE A.

STATEMENT RESPECTING CRIMINAL LUNATICS TO BE FILLED UP AND TRANSMITTED TO THE MEDICAL SUPERINTENDENT WITH EVERY CRIMINAL LUNATIC.

Name	.	.	.	.	.	.
Age	.	.	.	.	.	.
Date of Admission	.	.	.	.	.	.
Former occupation	.	.	.	.	.	.
From whence brought	.	.	.	.	.	.
Married, single, or widowed	.	.	.	.	.	.
How many children	.	.	.	.	.	.
Age of youngest	.	.	.	.	.	.
Whether first attack	.	.	.	.	.	.
When previous attacks occurred	.	.	.	.	.	.
Duration of existing attack	.	.	.	.	.	.
State of bodily health	.	.	.	.	.	.
Whether suicidal or dangerous to others	.	.	.	.	.	.
Supposed cause	.	.	.	.	.	.
Chief delusions or indications of insanity	.	.	.	.	.	.
Whether subject to epilepsy	.	.	.	.	.	.
Whether of temperate habits	.	.	.	.	.	.
Degree of education	.	.	.	.	.	.
Religious persuasion	.	.	.	.	.	.
Crime	.	.	.	.	.	.
When and where tried	.	.	.	.	.	.
Verdict of jury	.	.	.	.	.	.
Sentence	.	.	.	.	.	.

The 27 & 28 Vict. c. 29, intituled "An Act to amend the Act third and fourth Victoria, chapter 54 (*a*), for making further provision for the confinement and maintenance of insane prisoners" (23rd June, 1864), after reciting that it is expedient to amend the 3 & 4 Vict. c. 54, enacts as follows:—

27 & 28 Vict. c. 29.

Sect. 1. The first section of the said Act, 3 & 4 Vict. c. 54 (*a*), is hereby repealed.

Sect. 1 of recited Act repealed.

1. *How far  
liable for  
Crimes, etc.*

Prisoners becoming insane, power to two justices to inquire, with medical aid, respecting such insanity.

If certified by justices and such medical aid that prisoner is insane, secretary of state may grant warrant for removal of prisoner to a lunatic asylum.

If secretary of state has reason to believe prisoner sentenced to death to be insane, he may desire medical aid to inquire into the same.

If prisoner afterwards pronounced sane, how to be dealt with.

Sect. 2. If any person while imprisoned in any prison or other place of confinement under any sentence of transportation, penal servitude, or imprisonment, or under a charge of any offence, or for not finding bail for good behaviour or to keep the peace, or to answer a criminal charge, or in consequence of any summary conviction or order by any justice or justices of the peace, or under any other than civil process, shall appear to be insane, it shall be lawful, if such person is confined in a prison to which visiting justices are appointed, for two or more of the visiting justices of such prison, or if such person is in any other place of confinement, for two or more justices of the peace of the county, city, borough, or place in which such place of confinement is situate, and such visiting or other justices are hereby required to call to their assistance two physicians or surgeons, or one physician and one surgeon, duly registered as such respectively under the provisions of an Act passed in the session of the twenty-first and twenty-second years of her Majesty's reign, chapter ninety, and to be selected by them for that purpose, and to inquire with their aid as to the insanity of such person; and if it shall be duly certified by such justices or any two of them, and such physicians or surgeons, or such physician and surgeon, that such person is insane, one of her Majesty's principal secretaries of state may, upon receipt of such certificate, if he shall think fit, direct by warrant under his hand that such person shall be removed to such lunatic asylum or other proper receptacle for insane persons as the said secretary of state may judge proper and appoint; and if at any time it shall be made to appear to one of her Majesty's principal secretaries of state that there is good reason to believe that any prisoner in confinement under sentence of death is then insane, either by means of a certificate in writing to that effect in the form given in schedule A., transmitted to him by two or more of the visiting justices of the prison in which such prisoner under sentence of death is confined, or by any other means whatsoever, such secretary of state shall appoint two or more physicians or surgeons, duly registered as aforesaid, to inquire as to the insanity of such prisoner; and if on such inquiry the prisoner shall be found to be then insane, the fact shall be certified in writing by such persons to the said secretary of state, and on the receipt of such certificate the said secretary of state shall direct by warrant under his hand that such prisoner shall be removed to such lunatic asylum or other proper receptacle for insane prisoners as aforesaid; and every person so removed under this Act, or already removed and in custody under any former Act relating to insane prisoners not under civil process, shall remain in confinement in such asylum or other proper receptacle as aforesaid, or in any other lunatic asylum or other proper receptacle to which such person may be removed by any like warrant which the secretary of state is hereby empowered to issue, if he shall think fit, until it shall be duly certified to the said secretary of state by two physicians or surgeons, or one physician and one surgeon, duly registered as aforesaid, that such person is sane, and upon the receipt of such last-mentioned certificate the said secretary of state is hereby authorized to issue a warrant under his hand directing, if the period of imprisonment or custody of such person shall have expired, that he or she shall be discharged, or if such person shall still remain subject to be continued in custody, that he or she shall be removed to any prison or other place of confinement in which he or she may be lawfully confined, to undergo his sentence of death or other sentence, or, if not under sentence, to be dealt with according to law as if no such warrant for his removal to a lunatic asylum had been issued: Provided, that nothing in this Act contained shall be construed to repeal the thirty-eighth section (a) of the Act of the sixteenth and seventeenth years of her Majesty's reign, chapter ninety-six, or any part thereof.

(a) See this section, *post*, 614.

Sect. 3. All prisons which now are or may hereafter be placed under the government of the directors of convict prisons, by virtue of the Act of the thirteenth and fourteenth years of her Majesty's reign, chapter thirty-nine, or of any other Act now in force or which may hereafter be passed, shall for the purposes of this Act be deemed to be prisons to which visiting justices are appointed, and the said directors shall be deemed the visiting justices thereof, and the duties and powers hereinbefore imposed upon and given to any two or more of such visiting justices shall and may be performed and exercised by any one or more of such directors.

Sect. 4. All the provisions of the first-mentioned Act which are not hereby repealed, and all the provisions of an Act passed in the session of the twenty-third and twenty-fourth years of her Majesty's reign, intituled "An Act to make better Provision for the Custody and Care of Criminal Lunatics," shall apply to lunatics removed under this Act in all respects as if they had been removed under the first section of the first-mentioned Act, and as if the asylum to which they were removed under this Act were any asylum for criminal lunatics to which the provisions of the said Act of the twenty-third and twenty-fourth years of her Majesty's reign were applicable.

Sect. 5. Where any order shall have been or shall hereafter be made upon the guardians of any union formed under the provisions of the Act fourth and fifth William the Fourth, chapter seventy-six, for the payment of money under section two (c) of the said first-mentioned Act, the amount which shall be paid under such order shall be charged by the guardians upon the common fund of the union, and not to the account of any parish therein; and the power given to the justices to order the seizure and sale of the goods and chattels, or the receipt of the rents of the lands or tenements, of any insane person therein referred to, shall cease as regards the overseers, but shall apply to the guardians of the union who shall have incurred any expenses under any such order of justices as aforesaid.

Sect. 6. So much of section five (d) of the said first-mentioned Act as enables the overseers of any parish in a union to appeal against an order of justices adjudicating as to the settlement of any insane person is hereby repealed.

Sect. 7. This Act shall extend to England and Wales only.

# 1. *How far liable for Crimes, etc.*

Prisons placed under directors of convict prison to be deemed prisons to which visiting justices are appointed, and directors to be deemed the visiting justices.

Provisions of 3 & 4 Vict. c. 54 (a), not hereby repealed, and 23 & 24 Vict. c. 75 (b) to apply to this Act.

The charge and maintenance of insane prisoners to be borne by the common fund of the union.

So much of sect. 5 of 3 & 4 Vict. c. 54, as enables overseers to appeal, repealed.

Extent of Act.

## SCHEDULE A.

*We,* , being visiting justices of , hereby certify under our hands that we believe , a prisoner in the said prison of under sentence of death to be now insane.

The 30 & 31 Vict. c. 12, intituled "An Act to amend the Law relating to Criminal Lunatics," 12th April, 1867, after reciting that it is expedient to amend the law relating to criminal lunatics, enacts:—

Sect. 1. This Act may be cited for all purposes as the "Criminal Lunatics Act, 1867."

Sect. 2. "Criminal lunatic" shall mean for the purposes of this Act any of the persons following; that is to say,

1. Any person for whose safe custody during her pleasure her Majesty is authorized to give order:

Short title.

Definition of criminal lunatic.

(a) See ante, 590.

ante, 590.

(b) See ante, 594.

(d) See the 3 & 4 Vict. c. 54, s. 5,

(c) See the 3 & 4 Vict. c. 54, s. 2,

ante, 593.

1. *How far  
liable for  
Crimes, etc.*

2. Any person whom one of her Majesty's principal secretaries of state is authorized by law to direct to be removed to a lunatic asylum under any Act of Parliament :
3. Any person sentenced or ordered to be kept in penal servitude who may be shown to the satisfaction of the secretary of state to be unfit from imbecility of mind for penal discipline.

Application of  
Act.

Sect. 3. This Act shall not apply to Scotland or Ireland.

General applica-  
tion of sects. 9  
and 10 of 23 & 24  
Vict. c. 75.

Sect. 4. The enactments contained in the ninth and tenth sections of the Act of the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter seventy-five, relating to the following matters:—

1. To the power of the secretary of state to permit a lunatic to be absent from the asylum on trial :
2. To the expenses of conveyance and maintenance of criminal lunatics :

shall apply to a criminal lunatic in whatever asylum or place of confinement he may be, and to such asylum and place of confinement, so far as regards such lunatic, in the same manner as if such asylum or place of confinement were an asylum appropriated to criminal lunatics in pursuance of the last-mentioned Act.

Power of secre-  
tary of state to  
give conditional  
order of dis-  
charge.

Sect. 5. It shall be lawful for one of her Majesty's principal secretaries of state to discharge absolutely or conditionally any criminal lunatic.

Where any criminal lunatic has been discharged conditionally, if any of the conditions of such discharge are broken, the said secretary of state may by warrant, to be executed by any constable or other peace officer to whom such warrant is delivered, direct such person to be taken into custody, and to be conveyed to the place in which he was detained at the time of his discharge, or to any other place to which he might have been removed if no order for his discharge had been given, and any person so taken into custody shall revert in all respects to the same position as he was in at the time when the order of discharge was given, and shall be subject to be detained accordingly.

Criminal lunatic  
may be removed  
to a county  
asylum on expi-  
ration of his  
sentence.

Sect. 6. The eighth section of the said Act of the session of the twenty-third and twenty-fourth years of the reign of her present Majesty, chapter seventy-five, shall be repealed, and in place thereof be it enacted : Where the term of punishment awarded to any criminal lunatic confined in any asylum or other place of confinement for criminal lunatics expires before such evidence of his sanity has been given as justifies his being discharged, the following consequences shall ensue ; that is to say,

1. If such lunatic be confined in any asylum or place of confinement to which lunatics may be sent in pursuance of the "Lunatic Asylums Act, 1853," he shall thenceforth be deemed to be a pauper lunatic, and shall be in the same position in all respects as if he were a lunatic who immediately previous to the expiration of his term of punishment had been found wandering at large within the parish or place where the offence was committed in respect of which he became a criminal lunatic, and had been directed by a justice, in pursuance of the sixty-eighth section of the "Lunatic Asylums Act, 1853," to be received into the said asylum or place of confinement as a lunatic wandering at large, and a proper person to be taken charge of and detained under care and treatment :
2. If such lunatic be confined in any asylum or place of confinement to which lunatics cannot be sent in pursuance of the said "Lunatic Asylums Act, 1853," the said secretary of state may, by order under

his hand, direct the lunatic to be received into any asylum or place of confinement for lunatics into which a justice might have directed him to be received in pursuance of the said sixty-eighth section of the "Lunatic Asylums Act, 1853," if immediately previous to the date of the expiration of his term of punishment the lunatic had been found wandering at large within the parish or place where the offence was committed in respect of which he became a criminal lunatic, and the justice had been satisfied that the lunatic was a proper person to be taken charge of and detained under care and treatment; and any order made by the said secretary of state in pursuance of this section shall have the same effect, and be obeyed by the same persons, and subject them to the same penalties in case of disobedience, as an order made by a justice for the reception of a lunatic into an asylum or other place of confinement for lunatics in pursuance of the said sixty-eighth section of the said "Lunatic Asylums Act, 1853;" and such lunatic when received into the said asylum or place of confinement shall thenceforth be deemed to be a pauper lunatic, and shall be in the same position in all respects as if he had been such wandering lunatic as aforesaid directed to be received into the said asylum or place of confinement in pursuance of the said order of a justice.

*2. County and Public Lunatic Asylums, etc.*

## II. County and Public (a) Lunatic Asylums. Sending Lunatics to, and Care and Treatment of them.

The "Lunatic Asylums Act, 1853" stat. 16 & 17 Vict. c. 97 (20th August, 1853) (b), enacts as follows:—

16 & 17 Vict.  
c. 97.

Sect. 1. The following Acts relating to lunatic asylums for counties and boroughs, and the maintenance and care of pauper lunatics, in England (that is to say), an Act of the session holden in the eighth and ninth years of her Majesty, chapter one hundred and twenty-six, an Act of the session holden in the ninth and tenth years of her Majesty, chapter eighty-four, and an Act of the session holden in the tenth and eleventh years of her Majesty, chapter forty-three, shall be repealed; but such repeal shall not interfere with or affect any appointment, salary, or annuity made or granted, or act done, or agreement or contract entered into or made, or prevent or defeat any prosecution or proceeding for any offence committed or any penalty or forfeiture incurred before the commencement of this Act, but every such agreement or contract shall and may (subject to the provisions hereinafter contained in relation thereto) be carried into effect and enforced, and every such offence prosecuted, and every such penalty and forfeiture sued for, recovered, and applied, and every pending prosecution or proceeding continued, in like manner as if this Act had not been passed.

8 & 9 Vict. c. 126,  
9 & 10 Vict. c. 84,  
and 10 & 11 Vict.  
c. 43 repealed,  
but not to affect  
appointments,  
etc.

*As to providing Asylums and Appointment of Committees of Visitors.*

Sect. 2. The justices of every county (c) and (save as hereinafter otherwise provided) of every borough not having an asylum for the pauper lunatics thereof, shall provide an asylum in manner herein directed (that is to say), the justices of every such county and the recorder of every such borough shall at or before the general or quarter sessions

Justices of  
county and  
borough not hav-  
ing a lunatic  
asylum to pro-  
vide one, and  
justices of the

(a) As to asylums for criminal lunatics, see 23 & 24 Vict. c. 75, *ante*, 594.

(b) This Act is amended by the 18 & 19 Vict. c. 105; 19 & 20 Vict. c. 87; 25 & 26 Vict. c. 111; 26 & 27

Vict. c. 110; and 28 & 29 Vict. c. 80.

(c) As to the definition of the word "county" in this Act and the Acts construed therewith, see sect. 132 and note (a) thereon, *post*, 652.

2. *County  
and Public  
Lunatic  
Asylums, etc.*

county or recorder of the borough at or before a certain time to direct notice to be given of the intention to appoint a committee for that purpose.

Justices to appoint a committee to superintend the providing of an asylum, or to treat for uniting with some county, etc., or to effect one or other of such purposes.

Subscribers to any hospital empowered to ap-

for such county or borough next after the twentieth day of December, one thousand eight hundred and fifty-three, direct public notice to be given by the clerk of the peace of such county or borough, in some newspaper or newspapers commonly circulated in such county or borough, of the intention of the justices of such county or borough to appoint at the then next general or quarter sessions for such county, or (in the case of a borough) at a special meeting of the justices of such borough to be fixed in such notice, and to be holden within three months from the date thereof, a committee of justices to provide an asylum for the pauper lunatics of such county or borough, under the provisions of this Act; and the clerk of the peace of such county or borough shall, within ten days after being so directed as aforesaid, cause such notice to be given accordingly.

Sect. 3. The justices of every such county and borough respectively (such notice having been given as aforesaid) shall at the then next general or quarter sessions for such county, or at such special meeting as aforesaid of the justices of such borough, either themselves determine in which of the modes hereinafter mentioned an asylum shall be provided for such county or borough, or shall refer the selection to the committee to be appointed as hereinafter mentioned, and shall elect some justices of such county (a) or borough to be a committee to provide such asylum, and may authorize such committee to provide such asylum, in such of the modes hereinafter mentioned as the said justices shall have determined (that is to say), to superintend the erecting or providing of an asylum for the pauper lunatics of such county or borough for such county or borough alone, or to treat and enter into an agreement for uniting with any county or counties, borough or boroughs, alone or together with the subscribers to any hospital for the reception of lunatics (b), established or in course of erection, or afterwards to be established, or for uniting with any county or counties and borough or boroughs jointly, or jointly and also together with the subscribers to any such hospital as aforesaid, in erecting or otherwise providing an asylum under or for the purposes of this Act, as the justices appointing such committee may have determined, or in case the said justices appointing such committee think fit to refer the selection of the mode in which such asylum shall be provided to the committee, they may authorize such committee to provide such asylum in such of the modes aforesaid as to the committee may seem best; and any committee so authorized to treat and enter into an agreement may treat and enter into such agreement with any committee or committees having due authority in that behalf under this Act, or any former Act, for any county or counties, borough or boroughs, or on behalf of any such subscribers as aforesaid, and with any committee of visitors of any existing asylum, and whether or not any previous agreement for uniting may have been already entered into between some of the parties under this Act or any former Act; and by any such agreement to be entered into as aforesaid the several committees, parties thereto, may, to the extent of their authority, in lieu of agreeing to erect or provide an asylum, or in addition thereto, and in consideration of any payment in gross or of the payment of any sum in the nature of rent or otherwise, agree for the joint use of any existing asylum or hospital, and, where they think fit, for enlarging the same.

Sect. 4. It shall be lawful for the major part of such of the subscribers to any such hospital as aforesaid as shall be present at any meeting of

(a) The 19 & 20 Vict. c. 87, *post*, provides that where a committee is or shall thereafter be appointed to provide an asylum for any county under this Act, the recorder of every borough now or hereafter annexed to such county for the purposes of

the said Act shall appoint two justices of such borough to be members of such committee.

(b) The 18 & 19 Vict. c. 105, s. 1 (*post*, p. ), provides that any single county or borough may unite with the subscribers to a hospital.

such subscribers called together expressly for this purpose by advertisement in a newspaper commonly circulated in the place where such hospital is or is intended to be situate, to elect any number of such subscribers not exceeding five to be a committee to treat and enter into an agreement for uniting with any county or counties or borough or boroughs alone, or any county or counties and borough or boroughs jointly, under and for the purposes of this Act: and where any such agreement has been or shall be entered into under any former Act or this Act, nothing in this Act shall prevent the reception into the asylum provided under such agreement, or the discharge therefrom, of so many of any lunatics other than pauper lunatics as might have been received into such hospital or asylum if this Act had not been passed.

Sect. 5. It shall be lawful for the committee of visitors of any asylum already provided for any county or borough, alone or otherwise, to enter into an agreement for uniting for the purposes of this Act with any county or counties, borough or boroughs, alone or together with the subscribers to any such hospital as aforesaid, or for uniting with any county or counties and borough or boroughs jointly, or jointly and also together with the subscribers to any such hospital (a).

Sect. 6. Provided always, that where a committee has been appointed before the commencement of this Act for any county or borough for any of the purposes aforesaid, or proceedings have been taken for or towards the appointment of a committee for any of the said purposes, nothing herein contained shall render it necessary to proceed afresh to the appointment of a committee for any of such purposes; and any proceedings already taken as aforesaid shall remain in force and be continued; and all the provisions of this Act shall be applicable to any such committee already appointed, or to be appointed under such proceedings, in like manner as if such committee had been appointed under the provisions of this Act.

Sect. 7. Provided also, that it shall be lawful for the justices of any such borough as aforesaid (b), at such special meeting, if they think fit, in lieu of electing a committee to superintend the erecting or providing of an asylum, or to treat for uniting, as hereinbefore mentioned, or to effect either of such purposes, to elect a committee of justices of such borough to contract with any committee of visitors of any existing asylum, or any committee providing or about to provide an asylum, whether for any county or borough, alone or otherwise, for the reception of the pauper lunatics of such first-mentioned borough into such asylum, in consideration of such payment in gross, or such annual or periodical payment, and upon and subject to such terms, stipulations, and conditions as to the duration and determination of the contract, and otherwise, as may be agreed upon; and it shall be lawful for any committee of visitors of any existing asylum, or any other such committee as last aforesaid, to contract with the committee for any such borough accordingly; and during the continuance of such contract the justices of such borough shall, at a special meeting of such justices to be holden within twenty days after the twentieth day of December in every year, appoint a committee of such justices to visit the pauper lunatics sent from such borough to such asylum, and two at least of the members of such com-

2. *County and Public Lunatic Asylums, etc.*

point a committee to treat for uniting with any county or borough, etc.

Committee of visitors of existing asylums may enter into agreements to unite.

Saving where a committee is already appointed, or proceedings for the appointment of a committee have been commenced

Justices of boroughs may contract with committees of visitors, etc., for reception of the pauper lunatics of the borough.

(a) Any such committee of visitors as herein mentioned may unite with the subscribers to any such hospital alone, 18 & 19 Vict. c. 105, s. 1, *post*.

(b) The powers conferred by this section are extended by the 28 & 29 Vict. c. 80, s. 2, *post*, to the justices of every county of a city or county of a town having quarter sessions

and a clerk of the peace and no recorder, notwithstanding such county of a city or town may have an asylum of its own; but it shall not be obligatory on any such county of a city or town to keep up and maintain any such asylum from and after or during such time as it shall avail itself of the provisions of this section.



2. *County  
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Asylums, etc.*

mittee shall together once at the least in every six months visit such asylum, and see and examine as far as circumstances will permit every lunatic received into such asylum under such contract, and shall after each such visit report the result thereof, with such remarks as they think fit, to the justices of such borough at a special meeting of such justices; and the justices making any such visit may, if they see fit, be accompanied by some physician, surgeon, or apothecary, other than a medical officer of the asylum; and such justices may by writing under their hands order the payment to such physician, surgeon, or apothecary of such reasonable sum for his services on any such visit as they may think fit, and such sum shall, upon the production of such order, be paid to such physician, surgeon, or apothecary by the treasurer of such borough; and every report of such justices so visiting shall be entered among the records of the court of quarter sessions of such borough, and shall be open to the inspection of any of the commissioners in lunacy; and such commissioners may, if they think fit, require a copy of every or any such report to be transmitted to them by the clerk of the peace of such borough; and while any such contract making adequate provision for the pauper lunatics of such borough is in force, such borough should not be required to provide an asylum for itself alone, or in union, as hereinbefore mentioned.

Boroughs now contributing to a county asylum deemed to have an asylum, but upon notice may separate from the county.

Sect. 8. Provided also, that every borough situate within a county having an asylum for pauper lunatics, and which at the time of the passing of the said Act of the eighth and ninth years of her Majesty contributed and still contributes to such asylum, shall be considered as having an asylum for the pauper lunatics of such borough; but it shall be lawful for any such borough, at any time hereafter, upon giving six months' notice in writing under the hand of the town clerk, in pursuance of a resolution of the council of such borough (a), to the clerk of the peace of the county, to separate itself, so far as relates to the establishment of a lunatic asylum for such county, and the maintenance of lunatics therein, from such county, and from and after the expiration of such notice such borough shall for the purposes of this Act be deemed a borough not having an asylum for the pauper lunatics thereof; and from and after the expiration of such notice, and the withdrawal from such county asylum of all lunatics from or belonging to such borough, such borough shall not be liable to pay or contribute towards the expense of the establishment of such asylum, or the maintenance of lunatics therein, but until the withdrawal from such county asylum of all lunatics from or belonging to such borough such borough shall be liable to contribute towards the expenses of such asylum, in the same manner and to the same extent as if such notice had not been given.

Every borough not having six justices besides the recorder, to be annexed to the county or one of the counties in which it is situate, for the purposes of this Act.

Sect. 9. Provided also, that every borough in which at the passing of the said Act of the eighth and ninth years of her Majesty hereby repealed, there were not six justices besides a recorder shall, for the purposes of this Act, be annexed to and be part of the county in which it is wholly situate, or in case it be not wholly situate in any one county shall for the purposes of this Act be annexed to and be part of such one of the counties in which it is situate as such borough may have been annexed to under the said Act of the eighth and ninth years of her Majesty, or if not already so annexed then the same shall be annexed to and be part of such one of the said counties as one of her Majesty's principal secre-

(a) By 18 & 19 Vict. c. 105, s. 6, *post*, councils of boroughs having taken upon themselves the execution of this Act, or of the previous Act 8 & 9 Vict. c. 126 (repealed hereby), are subject to and have the

duties, powers, and authorities by this Act and the 18 & 19 Vict. c. 105 imposed or conferred on justices of a borough or any committee elected by them.

taries of state shall by writing under his hand direct; and the recorder of every such borough shall, at the general or quarter sessions next after the twentieth day of December in every year, appoint two justices of such borough to be members of the committee of visitors of the asylum of the county to which such borough is or shall be annexed (*a*); and the justices of every county to which any borough is or shall be annexed as aforesaid shall, at their general or quarter sessions, from time to time fix the sum to be contributed by such borough towards the expenses of and incident to erecting, providing, and maintaining the asylum of such county, according to the comparative population of such borough and county as stated in the then last returns made of the same under the authority of Parliament, and cause notice thereof in writing to be given to the treasurer of such borough, and such sum shall be raised by a borough rate to be made by the council of the borough in manner directed by the Act of the session holden in the fifth and sixth years of King William the Fourth, "to provide for the regulation of municipal corporations in England and Wales," or out of the borough fund, if the council think fit, and shall be paid by the treasurer of the borough to the treasurer of the asylum.

Sect. 10. If at any time after the expiration of one year after the passing of this Act it appear to one of her Majesty's principal secretaries of state, upon the report of the commissioners in lunacy, that the justices of any borough by this Act required to provide an asylum, or contract for the care of the pauper lunatics thereof, have not provided an asylum, or entered into an agreement for that purpose, or into a subsisting contract making adequate provision for the care of the pauper lunatics thereof in some asylum, and that any asylum belonging wholly or in part to the county or any of the counties (if more than one) in which such borough is locally situate, either wholly or in part, is capable of affording accommodation for the pauper lunatics of such borough, or may be conveniently enlarged so as to afford such accommodation, it shall be lawful for such secretary of state, with the consent of the committee of visitors of such asylum, by writing under his hand, to annex such borough for the purposes of this Act to such county; and the justices of every borough so annexed under this provision shall, at a special meeting of such justices to be holden within twenty days after the twentieth day of December in every year, appoint (*b*) two justices of such borough to be members of the committee of visitors of the asylum of the county to which such borough shall be annexed; and the provision in the enactment lastly hereinbefore contained in relation to the contribution by a borough annexed to a county under such enactment to the expenses of the asylum of such county, shall extend to any borough so annexed under this provision.

Sect. 11. Where any committee has been appointed for any county or borough (whether before or after the passing of this Act) for any of the purposes hereinbefore mentioned, it shall be lawful for the justices of such county or borough, if they think fit, at any general or quarter sessions for such county, or (in the case of a borough) at any special meeting of the justices of such borough, after like public notice as is required in the case of the first appointment of the committee, to enlarge or alter the powers of the committee so as to vest in the committee any such powers as might be vested in any committee on the original

*2. County  
and Public  
Lunatic  
Asylums, etc.*

Recorder to  
appoint two jus-  
tices to be  
members of com-  
mittee of visitors.

5 & 6 Will. 4,  
c. 76.

Boroughs neg-  
lecting to provide  
an asylum or to  
contract for the  
care of their  
pauper lunatics  
may be annexed  
by secretary of  
state to the  
county.

Justices of  
borough so an-  
nexed shall  
appoint two  
justices to be  
members of com-  
mittee of visitors.

Powers of com-  
mittees may be  
enlarged.

(*a*) The 18 & 19 Vict. c. 105, s. 7, *post*, enacts that places becoming boroughs after the commencement of this Act shall be deemed boroughs annexed to the counties in which they are situate; and the provisions of

this section are thereby extended to such boroughs.

(*b*) The recorder of the borough must now make this appointment, 19 & 20 Vict. c. 87, *post*.

2. *County  
and Public  
Lunatic  
Asylums, etc.*

New committees to be appointed in lieu of committees which have ceased or shall hereafter cease to exist, etc.

appointment thereof under this Act, and, if the justices see fit so to do, to appoint additional members of the said committee, and every such committee shall have the like powers, and the provisions of this Act shall be applicable to such committee in like manner, as if such committee had been originally appointed with the powers so vested in them under such enlargement or alteration of their powers.

Sect. 12. Where any committee appointed for any county or borough (either before or after the passing of this Act) for any of the purposes hereinbefore mentioned has ceased or shall hereafter cease to exist, without carrying into effect the purposes for which it was appointed, or, if appointed for the purpose only of treating for uniting or of contracting as aforesaid, has reported or shall hereafter report that it is not practicable or expedient to enter into an agreement for uniting or into the proposed contract, or to that effect, the justices of such county or the recorder of such borough shall, at or before the general or quarter sessions next after the passing of this Act, or next after the occasion has arisen, cause public notice to be given, in manner herein directed in the case of the original appointment of a committee under this Act for any of the said purposes, of the intention of the justices of such county or borough to appoint at the then next general or quarter sessions for such county, or (in the case of a borough) at some special meeting of the justices of such borough to be fixed in the notice and to be holden within three months from the date thereof, a committee in lieu of the committee previously appointed as aforesaid; and such notice having been so given, the justices of such county or borough shall, at the then next general or quarter sessions for such county, or at such special meeting as aforesaid of the justices of such borough, appoint a committee accordingly, and shall have the like discretion and authority for determining the purposes for which such committee shall be appointed as in the case of an original appointment of a committee under the provisions hereinbefore contained; or such justices may, if they think fit, in lieu of appointing a new committee in the place of any such committee appointed only for the purpose of treating for uniting or of contracting as aforesaid, and which may have reported that it is not practicable or expedient to enter into an agreement for uniting or into the proposed contract, or to that effect, enlarge or alter the powers of such committee as hereinbefore provided, and, if such justices think fit, appoint additional members of such committee.

Notice for appointment of a committee given at a time subsequent to that required by this Act, and the appointment of such committee, to be valid.

Sect. 13. Provided always, that where the justices of any county or the recorder of any borough have or has not, in pursuance of any of the provisions hereinbefore contained, at or before such general or quarter sessions as in that behalf required, caused notice to be given of the intention of the justices of such county or borough to appoint a committee under this Act, it shall be lawful for the justices of such county or the recorder of such borough, at or before any subsequent general or quarter sessions, to cause such notice to be given in manner required by this Act; and the appointment of a committee in pursuance of such notice, or the enlargement or alteration of the powers of any existing committee, and the appointment of any additional members of such committee, at the sessions or meeting for which such notice has been given, shall be valid.

Committees uniting to enter into agreement in the form of schedule (A.).

Sect. 14. When two or more committees agree to unite for the purposes of this Act, an agreement shall be entered into and signed by the several committees uniting, or the major part of such committees respectively, in the form or to the effect set forth in schedule (A.) to this Act (a); and such agreement, when signed by the major part of each

(a) The 18 & 19 Vict. c. 105, sects. 2-4, *post*, provides as to the manner in which the proportion of expenses

to be borne by each county and borough is to be fixed. By sect. 2, where two or more committees

such committee, and not before, shall be binding upon every county (a) and borough, and the subscribers (if any) for or on behalf of which or whom such agreement has been entered into; and every such agreement shall specify the proportion in which the expenses necessary for carrying into execution the purposes of this Act shall be charged upon each county and borough, and the subscribers (if any) so uniting; and the proportions of the counties and boroughs uniting shall be calculated and fixed with reference to their respective populations as stated in the then last return made of the same under the authority of Parliament; and where under any such agreement a right to the joint use of any existing asylum or hospital is required by any county or borough, or the subscribers to any hospital, such agreement shall fix the sum to be paid by such county, borough, or subscribers towards the expenses already incurred in erecting or providing such asylum or hospital.

Sect. 15. Provided always, that it shall be lawful for such committees to insert in the agreement to be entered into by them any stipulations or conditions, in addition to the matters by this Act required to be specified in such agreement, so that such additional stipulations or conditions do not in any way subject the acts of the committee of visitors to the approval or control of any court of general or quarter sessions, or of any justices, in any case not provided for by this Act, and the additional stipulations and conditions so inserted in the said agreement shall be of the same force and effect as the matters so required to be specified, notwithstanding that such additional stipulations or conditions may control in any other manner than as hereinbefore specified and excepted the discretion and acts of the committee of visitors as regulated by this Act, or may require the consent or approval of, or may subject the acts or orders of the visitors to be disallowed, modified, or controlled by one of her Majesty's principal secretaries of state, in cases not provided for by this Act; but any stipulations or conditions subjecting the acts of the committee of visitors to the approval or control of any court of general or quarter sessions, or of any justices, in any case not provided for by this Act, shall be void and of none effect.

Sect. 16. Provided also, that with the consent in writing under the hands of the greater number of visitors of each county and borough, and of the greater number of visitors of any body of subscribers united under any agreement entered into under this Act or any former Act, and with the previous consent in writing under the hand of one of her Majesty's principal secretaries of state, the committee of visitors may from time to time repeal or alter any of the stipulations or conditions of such agreement (a), but not so as to subject the acts of the committee of visitors to

2. *County and Public Lunatic Asylums, etc.*

Additional stipulations or conditions may be inserted in agreement, but not so as to subject acts of visitors to control of general or quarter sessions.

With consent of visitors, stipulations or conditions may be repealed.

agree to unite, such proportion may be fixed with reference to the accommodation likely to be required for the pauper lunatics of such county and borough respectively. By sect. 3 agreements for uniting thereafter entered into must stipulate for contribution by counties and boroughs, according to their respective populations, where not fixed under the provisions of sect. 2. By sect. 4, where an agreement for uniting had (then) been already entered into, expenses are to be contributed in proportion to their respective populations, save where fixed under the provisions of sect. 2.

(b) By 26 & 27 Vict. c. 110, s. 1, *post*, where an agreement for providing a common asylum has been duly entered into between divers counties properly so called, and such agreement has been afterwards varied by the admission as a party thereto of a county of a city or county of a town, the original agreement shall be binding on the counties originally parties thereto, in the same manner as if no variation of such agreement had been made.

(a) The power in this section is extended by 18 & 19 Vict. c. 105, s. 2, to authorize readjusting the proportions in which the expenses of carry-

2. *County and Public Lunatic Asylums, etc.*

Proportions of expenses (a) and of visitors may be varied on any further union being effected.

As to payment and application of money paid towards prior expenses, or becoming repayable under agreement for further union.

Committees of justices to report agreement to quarter sessions, and the original to be delivered to clerk of the peace of the county or borough in which the Asylum is situate, and a copy to clerk of the peace of each other county and borough.

After agreement for uniting is reported, visitors to be elected for carrying same into effect.

the approval or control of any court of general or quarter sessions, or of any justices, in any case not provided for by this Act.

Sect. 17. Where any agreement for uniting has been entered into under this Act or any former Act, and the union effected thereunder is added to by an agreement for further union, the proportions in which any expenses are under any former agreement for union to be charged on the counties or boroughs, or counties and boroughs, and the subscribers, if any, uniting, and the proportions in which visitors are to be elected for and on behalf of such counties or boroughs, or counties and boroughs, and subscribers (if any), may be altered as may be agreed upon.

Sect. 18. Where under an agreement for union any money is to be paid towards the expenses already incurred by any county or borough in erecting or providing any asylum, the same shall be paid to the treasurer of such county or borough, and shall be applied in liquidation and payment, *pro tanto*, of the moneys, if any, which shall have been raised by such county or borough for the purposes of this Act or the Acts hereby repealed, or any of them, in such manner as the justices of such county at any general or quarter sessions for the same, or the council of such borough, shall respectively order and direct, or if all such moneys shall have been paid, then the same shall be applied in diminution of any rate to be made in pursuance of this Act.

Sect. 19. When any agreement has been entered into and signed as aforesaid, the committee for each county and borough on behalf of which the same has been entered into shall report the same to the justices of such county or the recorder of such borough at the then next general or quarter sessions; and the original agreement shall, at such sessions for the county or borough in which the asylum to which the same relates is situate or is intended to be situate, be delivered to the clerk of the peace of such county or borough, to be by him entered among the records thereof; and a copy of such agreement shall, at such sessions for each other county or borough on behalf of which such agreement has been entered into, be delivered to the clerk of the peace of such county or borough, to be by him entered among the records thereof; and a copy of every such agreement shall be sent by the clerk of the peace to whom the original agreement is delivered, within twenty days after the delivery thereof to him, to the commissioners in lunacy; and any of the justices of any county or borough on behalf of which such agreement has been entered into, and any commissioner in lunacy, shall be entitled, without payment, to inspect the original agreement so delivered to the clerk of the peace as aforesaid; and any clerk of the peace hereby required to send to the said commissioners a copy of any agreement, who shall neglect so to do within the time aforesaid, and any clerk of the peace who shall refuse to permit such inspection as aforesaid, shall for every such offence be liable to a penalty not exceeding five pounds, and this enactment shall extend and be applicable to and in respect of every agreement by which any of the stipulations or conditions in any agreement entered into under this Act or any former Act shall be repealed or altered.

Sect. 20. When any agreement for uniting has been entered into, signed, and reported as aforesaid, the justices of every county to which the same relates shall, at the general or quarter sessions to which such agreement is reported, elect from among the justices of such county the number of visitors allotted to such county in the agreement; and the justices of every borough to which such agreement relates shall, at a special meeting of such justices to be holden within twenty days after such agreement has been reported to the general or quarter sessions for

ing into execution the purposes of this Act shall be charged on each county and borough, and the subscribers (if any) uniting. As to the

mode of fixing such proportions, see 18 & 19 Vict. c. 105, s. 2, *post*.

(a) As to contribution to expenses, see 18 & 19 Vict. c. 105, *post*.

such borough, elect from among the justices of such borough the number of visitors allotted to such borough in the agreement; and the majority of such of the subscribers to any hospital to which such agreement relates as shall be present at a meeting of such subscribers to be holden within twenty-eight days after the signing of such agreement, and of which meeting public notice shall have been given by advertisement in some newspaper circulated in the place in which such hospital is situate or is intended to be situate, shall elect from among such subscribers the number of visitors allotted to the subscribers to such hospital in such agreement; and the visitors so elected as aforesaid shall together form and be the committee of visitors for carrying such agreement into effect.

Sect. 21. Every committee elected for any county or borough as hereinbefore provided, and authorized to superintend the erecting or providing of an asylum for such county or borough, shall, until the election of visitors or a committee of visitors for such county or borough, or the asylum thereof, under any of the provisions herein contained, be deemed the committee of visitors for such county or borough.

*2. County and Public Lunatic Asylums, etc.*

Committee authorized to superintend the erection of asylums to be deemed committee of visitors.

Sect. 22. At the general or quarter sessions to be held next after the twentieth day of December in every year the justices of every county, and at a special meeting to be held within twenty days after the twentieth day of December in every year the justices of every borough, having for the time being an asylum (whether provided before or after the passing of this Act) either for the sole use of such county or borough or under any agreement for uniting as aforesaid, shall elect some justices of such county or borough to be visitors on behalf of such county or borough for the said asylum during the year next ensuing the election; and where such asylum has been provided under any agreement for uniting entered into with any such subscribers as aforesaid, the majority of such of the subscribers as shall be present at a meeting to be holden in the month of January in every year, of which notice shall have been given by public advertisement in some newspaper circulated within the place in which such asylum is situate, shall elect some of such subscribers to be visitors for such asylum during the year then next ensuing; and where such asylum is for the sole use of any one county or borough, the visitors elected for such county or borough as aforesaid shall be "the committee of visitors" of such asylum; and where such asylum has been provided under any agreement for uniting, the visitors elected as aforesaid on behalf of every county and borough, and the subscribers (if any) to which the asylum belongs, shall together form and be "the committee of visitors" of such asylum: Provided always, that the number of the committee of visitors of any county or borough having an asylum for its sole use shall not be less than seven; and that in all other cases the number of visitors to be elected on behalf of every county and borough, and of any body of subscribers, to form and be the committee of visitors, shall be the number provided for in the agreement.

Visitors to be elected annually for asylums.

Sect. 23. Where any county or borough has more than one asylum a separate committee of visitors shall be appointed as aforesaid for every such asylum, each of which committee shall have all the powers and be subject to all the provisions of this Act with regard to the asylum for which it is appointed, as if it were the only asylum for that county or borough: Provided always, that it shall be lawful for the justices of the county or borough, if they think fit, with the approval of one of her Majesty's principal secretaries of state, to appoint the same committee for two or more such asylums.

A separate committee of visitors to be appointed for every asylum. Proviso.

Sect. 24. The several persons elected members of any committee of visitors shall within one month after their election assemble at some convenient place to be named in a notice in writing given by two or more of

Meetings of visitors.

*2. County  
and Public  
Lunatic  
Asylums, etc.*

Every committee to elect a chairman.

Number of members to constitute a meeting.

Questions how to be decided.

Clerk, on requisition of chairman or two visitors or of superintendent, to call meetings of visitors.

Chairman may convene meetings.

Visitors to appoint a clerk.

Committee of visitors to continue until first meeting of new committee, and in default of election of new committee to continue as if re-elected.

Provision for supplying vacancies in committees.

such visitors, or by the clerk to the outgoing committee by the direction of two or more of the said visitors, to the several members so elected, such notice to be given to each member personally, or left at his place of abode, or transmitted to him through the post-office, seven days at least before the time appointed for such meeting; and the said visitors may adjourn the said meeting from time to time or from place to place, and meet where and as often as they think necessary; and the said visitors shall at their first meeting after their election elect one of their members to be their chairman, who shall preside at all meetings at which he is present; and in case of the absence of the chairman from any meeting the members of the committee then present shall elect one of such members to be chairman for the meeting, who shall preside at the meeting; and to constitute a meeting of a committee there shall be present not less than three members thereof, except for adjournment, which may be made by less than three; and every question shall be decided by a majority of votes (the chairman, whether permanent or temporary, having a vote), and in the event of an equality of votes on any question the chairman for the time being shall have an additional or casting vote.

Sect. 25. The clerk of any committee of visitors shall, whenever required in writing by the chairman or two of the visitors, or by the superintendent of the asylum, and the chairman of any such committee may, whenever he shall see fit, convene a meeting of such committee by a notice in writing to each visitor of the time and place of such meeting, such notice to be delivered, left, or transmitted as aforesaid by such clerk or chairman seven days at least before the time appointed for the meeting.

Sect. 26. Every committee of visitors shall appoint a clerk to such visitors for the purposes of this Act, at such salary or remuneration as such visitors think fit, and may, if and when they think fit, remove any clerk appointed by them, and in any such case, or in case of the death or resignation of any such clerk, shall appoint a new clerk; and the clerk to any committee of visitors of any asylum may also be the clerk of such asylum; and any clerk to any committee of visitors shall, unless he sooner die, resign, or be removed, continue in office so long as such committee continue in office.

Sect. 27. The powers of any committee of visitors and of the members of such committee, whether appointed or elected before or after the commencement of this Act, shall continue until the first meeting of the committee by which such first-mentioned committee is to be succeeded, anything herein contained to the contrary notwithstanding; and if the justices of any county, or the justices or recorders of any borough, or any body of subscribers, neglect in any year to make such election or appointment as required by this Act, then the committee of visitors lastly before elected, or the members of such committee elected or appointed for such county or borough, or on behalf of such body of subscribers, or such of them as shall continue to act, shall be deemed and taken to be the committee of visitors, or to form part of the committee of visitors, as if such committee or members had been re-elected or re-appointed in such year, and so from time to time so often as the said justices, recorder, or subscribers so neglect.

Sect. 28. In case any member of any committee or any visitor elected or appointed under this Act or any Act hereby repealed, die, resign, or become incapable to act, the justices for the county or borough for which such member or visitor was elected or appointed, at any general or quarter sessions for such county, or at a special meeting of the justices of such borough, or where such visitor was appointed by the recorder of a borough, then the recorder of such borough, shall elect or appoint some other justice in his place; and where any such member or visitor

has been elected on behalf of any body of subscribers, the majority of such of the said subscribers as shall be present at some meeting called in manner provided with respect to the annual election of visitors shall elect some other subscriber in his place; but, notwithstanding any vacancy in any committee, the continuing members or visitors may act as if no such vacancy had occurred.

Sect. 29. In case at any time after the expiration of one year from the commencement of this Act it appear to one of her Majesty's principal secretaries of state, upon the report of the commissioners in lunacy, that any county or borough has not an asylum for the pauper lunatics thereof, it shall be lawful for such secretary of state, by writing under his hand, to require the justices of such county or borough forthwith to provide a fit and sufficient asylum for so many pauper lunatics as upon the report of the said commissioners such secretary of state may think fit and direct, and such justices shall forthwith proceed as hereinbefore mentioned to cause such asylum to be provided: Provided always, that no borough annexed to any county by virtue of this Act or any former Act, or on behalf of which a subsisting contract making adequate provision for the care of the pauper lunatics thereof shall have been entered into under this Act, or which now contributes to any asylum for the county in which it is situate, and shall not have been separated from such county, shall be required to provide an asylum under any such order.

Sect. 30. It shall be lawful for the justices of every county and borough having an asylum or asylums for the pauper lunatics thereof, where it appears to such justices at any general or quarter sessions, or (in the case of a borough) at any special meeting of such justices, that the asylum or asylums of such county or borough is or are inadequate or unfit for the proper accommodation of the pauper lunatics of such county or borough, to cause an additional asylum, or a new asylum in lieu of any existing asylum of such county or borough, to be provided for such county or borough, in like manner as hereinbefore directed in the case of a county or borough not having an asylum, or to direct the committee of visitors of any existing asylum to cause the same to be enlarged or improved, or in any other case where the said justices deem it necessary or expedient, to direct the committee of visitors of any existing asylum to improve the same; but it shall not be incumbent on any such committee under any such direction as aforesaid to enlarge or improve such asylum where the same does not belong to one county or borough alone, without a like direction from the justices of every county or borough to which the same belongs; and in case at any time it appear to one of her Majesty's principal secretaries of state, upon the report of the commissioners in lunacy, that any existing asylum or asylums for any county or borough is or are inadequate or unfit for the proper accommodation of the pauper lunatics thereof, it shall be lawful for such secretary of state, by writing under his hand, to require the justices of such county or borough forthwith to cause an additional asylum or a new asylum in lieu of any existing asylum, to be provided as aforesaid for such county or borough, or the committee or committees of visitors of any existing asylum or asylums forthwith to enlarge or improve the same, in such manner as the said secretary of state may see fit and direct, and the said secretary of state may require accommodation to be provided in and by such additional or new asylum, or by means of the enlargement of such existing asylum or asylums, for so many pauper lunatics as upon the report of the said commissioners such secretary of state may think fit and direct; and the said justices or committee or committees shall forthwith carry such requisition of the said secretary of state into effect; and the powers and provisions in this enactment contained with respect to the enlargement and improvement of asylums shall extend and be applicable to and for the enlargement and improvement of the offices, out-

2. *County and Public Lunatic Asylums, etc.*

Continuing members may act.

Secretary of state may require any county or borough not having an asylum to provide one.

Where accommodation of existing asylum is inadequate, additional asylum to be provided, or existing asylum enlarged.



2. *County and Public Lunatic Asylums, etc.*

When an asylum or additional asylum or accommodation is required, the visitors to procure and determine on plans and estimates, and to contract for the purchase of land and buildings, and for erecting, etc., the necessary buildings.

Contractors to give security.

Contracts and orders to be entered in a book, to be deposited, and to be open to inspection.

Visitors to report.

buildings, yards, courts, outlets, ground, land, and appurtenances belonging thereto (a).

Sect. 31. It shall be lawful for any committee of visitors having authority to provide an asylum for pauper lunatics (but subject as hereinafter mentioned) to procure, examine, and determine on plans for the same (b), and estimates, and contract (c) for the purchase of lands and buildings (and in the case of buildings, either with or without any fittings-up and furniture belonging thereto), and for building, erecting, altering, improving, restoring, furnishing, and completing, or otherwise providing such asylum, and rendering the same in all respects fit and ready for the reception of lunatics, and for making, laying out, and completing the offices, outbuildings, yards, courts, outlets, grounds (a), land, and appurtenances of or for such asylum, and for providing clothing for patients (d), and everything necessary for the opening of any such asylum; and any committee of visitors having authority to enlarge, alter, or improve any asylum shall have like powers for the purpose of enlarging, altering, or improving such asylum, or the offices, outbuildings, yards, courts, outlets, grounds, land, and appurtenances thereto belonging; and every person contracting for building or doing any other such work as aforesaid shall give to the clerk of such visitors sufficient security for the due performance of the contract; and every such contract, either for purchase of lands or buildings, or for doing any such work as aforesaid, and all orders relating thereto, shall be entered in a book to be kept by the clerk to such visitors; and when such asylum and appurtenances, or (as the case may be) the additions to or alterations or improvements thereof, are completed, such book shall be deposited and kept among the records of the county or borough, or where more than one county or borough is interested in such contract by reason of an agreement for union, then among the records of the county or borough which has contributed the largest proportion of the expenses of such contract; and every such book may be inspected at all reasonable times by any person contributing to the rates of the county or borough, or, in the case of a union, to the rates of any of the counties or boroughs, and also, if any part of such expenses has been paid by voluntary subscriptions, by any of such voluntary subscribers; and a copy of every such book shall be kept at the asylum to which the contract relates: Provided always, that the said visitors shall from time to time make their report to the general or quarter sessions of the county or borough, counties or boroughs, for which they, or such of them as have not been elected by subscribers as aforesaid, have been elected, of the several plans, estimates, and contracts which have been agreed upon, and of the sum or sums of money necessary to be raised and levied for defraying the purchase moneys and expenses thereof on the county or borough, or, in the case of such union as aforesaid, on each or every of the counties or boroughs; which plans, estimates, and contracts shall

(a) As to providing burial grounds for persons dying in any county or borough lunatic asylum, see 18 & 19 Vict. c. 105, s. 13, *post*, 666, and 25 & 26 Vict. c. 111, s. 9, *post*, 671.

(b) This section is a re-enactment of 17th sect. of the 8 & 9 Vict. c. 126 (repealed by this Act). See *Moffat v. Dickson* (22 L. J. (N. S.), M. C. 275, 13 C. B. 543) as to power of visitors to contract for the payment of plans not ultimately approved of, and the remedy in such a case.

(c) Under the previous Act (8 & 9 Vict. c. 126) it was held that an ac-

tion was maintainable against the committee for the time being in the name of their clerk, upon a contract entered into by a former committee within the scope of their authority. (*Kendall v. King*, 25 L. J. (N. S.), C. P. 132; 17 C. B. 483.) As to plaintiff's remedy to enforce judgment, see *ibid*.

(d) Visitors may also enter into agreements as to the burial of pauper lunatics, 18 & 19 Vict. c. 105, ss. 11, 12, *post*, 666, and 25 & 26 Vict. c. 111, s. 9, *post*, 671.

be subject to the approbation of the Court (a) or Courts of general or quarter sessions of such county or counties, and of the justices of such borough or boroughs (b), before the same are completed or carried into execution, save where the amount to be expended does not exceed an amount previously fixed by the Court or Courts of general or quarter sessions of such county or counties or by the justices of such borough or boroughs.

Sect. 32. It shall be lawful for any committee of visitors to purchase and take a conveyance for the purposes of this Act from any person having absolute power to sell and convey, independently of this Act, any lands or buildings, in consideration of a yearly rentcharge or annual sum to be limited to such person, his heirs and assigns, or as he or they shall direct, out of the lands or buildings to be purchased, and the same shall accordingly be conveyed as aforesaid, subject thereto, and to powers of distress and entry for securing the same.

2. *County and Public Lunatic Asylums, etc.*

Power to visitors to purchase in consideration of a rent reserved.

Sect. 33. It shall be lawful for any committee of visitors, instead of purchasing any land or buildings which they are hereby authorized to purchase, to take a lease thereof (c) for any absolute term of not less than sixty years, at such annual rent and under such covenants as the said committee of visitors think fit; and it shall also be lawful for such committee to rent any land by the year for the purpose of employing such of the inmates of the asylum as may be fit for such employment, or otherwise for the occupation and use of the patients.

Powers for visitors to take a lease for rent.

Sect. 34. The asylum to be provided for any county or borough either solely or jointly, may be without the limits of such county or borough, and when any asylum provided or to be provided solely or in part for any county or borough, or any part of such asylum, is situate within the limits of any other county or borough, then and in every such case the justices of the county or borough to which such asylum wholly or partly belongs shall have full power and authority to act in such other county or borough, so far as concerns the regulation of such asylum, and the powers conferred by this Act, in the like manner as if such asylum and every part thereof were situate within such first-mentioned county or borough.

Asylum may be erected beyond the limits of any county or borough, and justices of such county or borough may notwithstanding act therein.

Sect. 35. No lands or buildings already or to be hereafter purchased or acquired, under the provisions of any former Act or this Act, for the purposes of any asylum (with or without any additional building erected or to be erected thereon), shall while used for such purposes be assessed to any county, parochial, or other local rates at a higher value or more improved rent than the value or rent at which the same were assessed at the time of such purchase or acquisition (d).

Assessment to local rates not to be increased after purchases for the purposes of this or any former Act.

(a) A contract for the sale of land to the committee of visitors may be approved of by the Court of quarter sessions before being actually signed, if it can be identified as the contract which was afterwards entered into. (*Devenish v. Brown*, 26 L. J. (N. S.), Ch. 23.)

(b) By 25 & 26 Vict. c. 111, s. 4, it is provided that plans, estimate, and contracts, when not approved by the sessions or other bodies whose approbation is required by this section, shall be submitted to the secretary of state, whose decision shall be final; see the statute, *post*, 668.

(c) By 25 & 26 Vict. c. 111, s. 11, *post*,

671, the powers of taking additional lands on lease are greatly extended; and the restrictions as to the term for which the committee may take such lease, are not to apply to lands leased under the provisions of that section.

(d) A county lunatic asylum is not deprived of the protection of this section because the committee of visitors elects to exercise the power conferred upon them of accommodating other lunatics than those for whose use the building was designed, thereby realizing considerable profit. (*Reg. v. Fulbourn (Overseers)*, 34 L. J. (N. S.), M. C., 106; 11 Jur. (N. S.) 620.) Land attached to a lunatic asylum,

2. *County and Public Lunatic Asylums, etc.*

Certain provisions of 8 & 9 Vict. c. 18, incorporated, and extended to authorize exchanges.

Sect. 36. The provisions of "The Land Clauses Consolidation Act, 1845," "with respect to the purchase of lands by agreement," "with respect to the purchase money or compensation coming to parties having limited interests, or prevented from treating, or not making title," and all other provisions of the said Act applicable to and in the case of the purchase of lands by agreement, shall be incorporated with this Act; and all parties (a) by the said provisions empowered to sell any lands may give lands in exchange for the purposes of this Act for other lands, and enter into all necessary agreements for that purpose, and on any such exchange money may be paid by either party by way of equality of exchange, and the said provisions "with respect to purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title," shall apply to any money coming to any such parties on any such exchange; and any lands to be purchased or taken in exchange for the purposes of this Act shall be conveyed to such persons, being not less than five in number, and in such manner as the committee of visitors purchasing the same or taking the same in exchange may direct, in trust for the purposes of this Act; and any conveyance to be so made shall have the like force and effect as a conveyance made under section eighty-one of the said "Lands Clauses Consolidation Act."

Provision for the appointment of new trustees of land purchased or acquired for asylum.

Sect. 37. When and so often as any land purchased or acquired under this Act or any former Act, for the purposes of an asylum, shall be vested in less than three trustees, or there shall not be any trustee thereof living, it shall be lawful for the committee of visitors of such asylum, or any three or more of them, by an instrument in writing under the hands of such visitors or any three or more of them, to appoint such number of new trustees of such land as such visitors may think fit; and such appointment shall be deposited and kept among the records of the county or borough, or, where more than one county or borough is interested in such land, then among the records of the county or borough having the largest interest therein; and all the estate and interest in such land which at the time of such appointment may be vested in any trustee or trustees, in trust for the purposes aforesaid, or in any other person, as heir, or devisee, or otherwise, subject to such trust, shall by virtue of such appointment vest in the trustees so appointed, either alone, or if there be any continuing trustees or trustee jointly with such continuing trustees or trustee, as the case may require, without any conveyance or assignment for that purpose.

Visitors to order all ordinary repairs of asylums, provided they do not exceed £400 per annum.

Sect. 38. The committee of visitors of every asylum may of their own authority from time to time order all such ordinary repairs as may be necessary for such asylum, and any additions, alterations, or improvements to or in such asylum, or the offices, outbuildings, yards, courts,

and cultivated as a farm or garden by the patients, for whose employment and diversion it was acquired, is also within this section, notwithstanding that the produce is in excess of the requirements of the establishment, and the surplus is sold at a profit. (*Ibid.*)

Held, that a house built by the visitors, on the extreme boundary of the grounds of the asylum, for and inhabited by the chaplain of the asylum, together with a garden attached thereto, cannot be said "to be used for the purposes of the asylum," within the meaning of this section,

but that it was different as to the house and garden of the medical superintendent, who is bound (sect. 55, *post*, 623) to reside in the asylum, although the house was not within the curtilage of the asylum. (*Congreve v. Upton (Overseers)*, 4 B. & S. 857; 10 Jur. (N.S.) 538.)

(a) This 36th section enables parties having limited interests to contract with the committee of visitors for the sale of land, although the committee have no compulsory powers of purchasing. (*Devenish v. Brown*, 26 L. J. (N.S.) Ch. 23.)

outlets, grounds, lands, and appurtenances thereto belonging, which to them may seem necessary or proper for the further or better accommodation of the pauper lunatics who may be received or taken care of therein, provided that the expense of all such additions, alterations, and improvements shall not exceed four hundred pounds in any one year; and if such asylum belong to one county or borough only, they shall cause the expense of such repairs, additions, alterations, or improvements to be paid by making an order upon the treasurer of such county or borough for the payment thereof, but if otherwise they shall apportion such expense in the proportion in which each county or borough has contributed to the erection thereof, or where any other proportion is fixed by any agreement for the time being in force, then in such other proportion, and where any such agreement only provides in what proportion the expense of repairs shall be defrayed, the said committee shall apportion the expense of such additions, alterations, and improvements in the same proportion unless it be otherwise provided by such agreement, and the said committee shall make an order on the treasurer of each county or borough for the payment of the proportion to be paid by such county or borough, and such treasurer shall pay the same accordingly out of any money of such county or borough then in his hands, or which may thereafter come to his hands, not specifically appropriated to any other purpose, and the same may be recovered from him, for the benefit of such asylum, by the treasurer or clerk thereof, together with all costs and expenses, in any of her Majesty's Courts at Westminster, or in any other Court of competent jurisdiction: Provided always, nevertheless, that no order for any such repairs, additions, alterations, or improvements as aforesaid, or for the payment of any money for the expenses thereof, where such expenses exceed the sum of one hundred pounds, shall be made, unless notice of the meeting at which the same shall be ordered, and of the intention to determine thereat the question of such expenditure, have been given in such manner and so long before the time appointed for the meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, nor unless three visitors concur in and sign such order: Provided also, that where any such expenditure as aforesaid is incurred otherwise than for ordinary repairs, the visitors shall report the same to the next general or quarter sessions of the county or borough, or each county and borough, on behalf of which such expenditure has been incurred.

Sect. 39. It shall be lawful for every committee of visitors, with the consent of one of her Majesty's principal secretaries of state under his hand, to determine and dissolve any union (*a*), whether such union have been formed under this Act or under any former Act, and upon such dissolution to divide and allot the lands, buildings, hereditaments, chattels, moneys, and effects of or belonging to such union between or among every such county and borough, and the subscribers (if any) between which and whom such union existed, in the proportions in which they respectively have contributed thereto or are interested therein, or in such other proportions and manner as the said visitors, with the approbation of the said secretary of state, think fit; and if on any such division or allotment there cannot be conveniently allotted to any county or borough or subscribers the proper proportion of such county, borough, or subscribers in the lands, buildings, hereditaments, chattels, moneys, and effects of such union, there shall be paid to such county, borough, or subscribers such sum of money as the said visitors, with the approbation of the said secretary of state, may direct, in full or in part satisfaction,

2. *County and Public Lunatic Asylums, etc.*

As to payment of expenses of repairs, etc.

No order for payment of money exceeding £100 to be made unless notice has been given of the meeting at which the same shall be ordered.

Power of visitors, with consent of secretary of state, to dissolve unions.

(*a*) By 18 & 19 Vict. c. 105, s. 5, *post*, 664, where there is a dissolution of a union, the justices of every county and borough united, must, before

any dissolution of their union takes effect, elect a committee to provide an asylum for their county or borough.

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as the case may require, of the aforesaid proportion of such county, borough, or subscribers; and every such sum of money shall be raised by the county or counties, borough or boroughs, to or between or among which the lands, buildings, hereditaments, moneys, chattels, and effects of the said union shall be allotted (if more than one) in such shares as the said visitors, with the approbation of the said secretary of state, think fit, in the same manner and by the same means as other moneys are appointed to be raised by counties or boroughs for the purposes of this Act: Provided always, that no union shall be so dissolved by any committee of visitors except under a resolution of such committee at a meeting specially convened for the purpose of determining the question of such dissolution by a notice given in such manner and so long before the time appointed for such meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, nor unless the majority of the whole number of the committee of visitors shall at such meeting have concurred in such resolution: Provided always, that in the case of a dissolution of union, where any county or borough having an asylum shall be united with any county or counties, borough or boroughs, not having an asylum, and have erected additional buildings and incurred any other expense for their benefit, and be in the receipt of an annual fixed sum or rent as a remuneration for the expenses so incurred in lieu of the payment of a sum in gross, it shall be lawful for the said county or counties, borough or boroughs, so paying such rent, if they shall think fit, to raise, in the same manner as is provided in the Act for the purpose of erecting county asylums, such a sum of money for the purpose of compensating the county or borough receiving such rent for the cessation of such rent as may be agreed upon and approved of by the committee of visitors of such county or counties, borough or boroughs, as may have been so united as aforesaid.

Power for visitors, with consent of secretary of state to sell or exchange lands and buildings.

Sect. 40. It shall be lawful for every committee of visitors, with the previous consent of one of her Majesty's principal secretaries of state under his hand, to sell, either by public auction or private contract, and subject to any conditions, any lands or buildings or parts of lands or buildings which may have belonged to and been used as or together with an asylum, or which may have been purchased or otherwise acquired under any former Act or this Act (*a*), for the purposes of an asylum, and found unsuitable or otherwise not required for such purposes, or to give the same in exchange for other lands or buildings, and to pay or receive through the treasurer of such asylum any money by way of equality or exchange; and every conveyance of lands or buildings so sold or given in exchange which shall be executed by the persons in whom the same may then be vested as trustees, or by any three of the members of the committee of visitors who sell the same, shall be effectual to convey the same for all the estate or interest then vested in such trustees, in trust for the purposes of such asylum, and the receipt of any three of the committee of visitors shall be a sufficient discharge for the purchase moneys or for any moneys to be received for equality of exchange; and such moneys, in case the sale or exchange be made by a committee of visitors of any one county or borough alone, shall be applied in carrying into execution the powers and purposes of this Act, or shall be paid to the treasurer of such county or borough and be applied for the general purposes thereof, or otherwise, as the justices of such county or borough shall, at some general or quarter sessions for such county, or at some special meeting of the justices of such borough, direct; and in every other case the moneys received shall be paid to the treasurer of the county, borough, or the subscribers to which or to whom the property

Application of purchase moneys.

(*a*) By 18 & 19 Vict. c. 105, s. 13, *post*, 666, a committee of visitors may convey land for a burial ground for lu-

natics, etc., dying in the asylum. See 25 & 26 Vict. c. 111, s. 9, *post*, 671.

sold or exchanged belonged, in case it belonged to any one of them, or if the same was joint property, then to the respective treasurers of every county and borough, and of the subscribers, if any, in the proportion in which such county, borough, and subscribers were respectively interested therein; and such moneys shall be held and applied by every such treasurer, in the case of a county or borough, as part of the general rates or funds of such county or borough, and in the case of any subscribers, as the majority of such of the subscribers as shall be present at any meeting convened for that purpose shall direct.

2. *County and Public Lunatic Asylums, etc.*

Sect. 41. Where any committee of visitors have (either before or after the passing of this Act) contracted for the purchase of any lands for the purposes of an asylum, or for any exchange of any lands for other lands for such purposes, and the lands so contracted to be purchased or taken in exchange are found to be unsuitable or are not required for such purposes, such committee, or any other committee appointed in their place, may, with the consent in writing of one of her Majesty's principal secretaries of state (notwithstanding such contract may have been approved as required by the said Acts hereby repealed, or this Act), procure a release from the said contract, and in consideration of such sum of money (if any) as the said committee, with such consent as aforesaid, may agree to pay; and the said committee or any three of such committee may, in consideration of such release, execute a release to the other party to such contract or other the persons bound thereby; and the consideration money (if any) by the said committee agreed to be paid as aforesaid, and all expenses in relation to the said contract and releases, shall be paid, defrayed, and raised in like manner as if the same were payable in respect of the purchase of lands for the purposes aforesaid.

Visitors may with consent of secretary of state, get released from contracts.

Sect. 42. It shall be lawful for every committee of visitors to contract with the committee of visitors of any asylum, or with the subscribers to any hospital registered or the proprietor of any house licensed for the reception of lunatics, for the reception into such asylum, hospital, or house of the whole or of a portion of the pauper lunatics of the county or counties, borough or boroughs, or counties and boroughs, or any of them respectively, for which such first-mentioned committee is acting, or for the use and occupation of all or any part of such registered hospital or licensed house, at such sum, either in gross or by way of annual or other periodical payment or rent, and under and subject to such terms, stipulations, and conditions, as such visitors shall think fit (a); and it shall be lawful for the committee of visitors of any asylum, or the subscribers to any registered hospital, or the proprietor of any licensed house, to contract with any committee of visitors accordingly: Provided always, that no such contract shall be made for any longer period than for the term of five years (b), and that any such contract may be determined by notice in writing under the hand of one of her Majesty's principal secretaries of state, and that every such contract with the proprietor of a licensed house shall determine on such house ceasing to be duly licensed for the reception of lunatics (c); provided also, that no such contract

Visitors empowered to contract for the reception of pauper lunatics into asylums of other counties or hospitals or licensed houses.

Period of such contract limited.

(a) Where any contract has been made under this section, the justices of the county or borough, may defray out of the county or borough rate so much of the weekly charge agreed upon for each lunatic, as may represent the sum due for the use of the asylum, hospital or licensed house,—not exceeding, however, one fourth of the whole of such weekly charge,

25 & 26 Vict. c. 111, s. 7, *post*, 670.

(b) By 18 & 19 Vict. c. 105, s. 10, *post*, 665, it is provided that contracts authorized by this section may be renewed.

(c) The powers of visitors under this Act continue applicable to a licensed house, after expiration of the licence, while any patients are therein, 18 & 19 Vict. c. 105, s. 9, *post*, 665.

2. *County and Public Lunatic Asylums, etc.*

As to money payable under contract for reception of lunatics into any asylum.

When any asylum can accommodate more than the lunatics of the county or borough, visitors may order the admission of other lunatics.

shall exempt the justices of any county or borough or any committee from the immediate duty and obligation of erecting or providing, or uniting in erecting or providing, an asylum or additional asylum, or of enlarging or improving any asylum, as required by this Act, where one of her Majesty's principal secretaries of state has caused notice to be given as aforesaid for the determination of such contract, although the term for which such contract was entered into has not expired by effluxion of time: Provided also, that any money which may be payable under such contract for the reception of the lunatics of any county or borough into any asylum beyond the weekly sums which may be charged under this Act for the lodging, maintenance, medicine, clothing, and care of lunatics in the asylum belonging to the county or borough to which such lunatics shall belong, shall be paid, defrayed, and raised by such county or borough out of any moneys in the hands of the treasurer for the county which shall be applicable for the repairs or other ordinary expenses of such asylum; provided also, that any hospital or licensed house with the subscribers or proprietor of which any such committee so contract as aforesaid shall be subject to the visitation of any of the members of such committee for the time being.

Sect. 43. Whenever it appears to the committee of visitors of any asylum that such asylum is more than sufficient for the accommodation of all the pauper lunatics of the county or borough or each county and borough to which the same wholly or in part belongs, and of any county or counties, borough or boroughs with which any existing contract for the reception of all or any of the pauper lunatics thereof in such asylum has been entered into, or which shall otherwise contribute to such asylum, it shall be lawful for the committee of visitors, if they think fit, to give notice thereof by advertisement in some newspaper commonly circulated in such county or borough, or every such county or borough as aforesaid, and (subject nevertheless and without prejudice to any agreement with any voluntary subscribers), by a resolution of the said committee, to permit the admission of so many pauper lunatics of any other county or borough (*a*), and (if such committee think fit) lunatics not paupers, but who, in the opinion of such committee, may be proper objects to be admitted into a public asylum, as to such committee may seem expedient, and at any time to rescind or vary any such resolution; and such committee may, if they think fit, by such resolution require that no pauper lunatic shall be admitted into such asylum thereunder without an undertaking by the minute of the guardians of the union or parish, or signed by two of the overseers of the parish, to which such lunatic is chargeable, or in the case of a lunatic not a pauper by the person signing the order (*b*), for the admission of such lunatic, for the due payment of the weekly charge for the lodging, maintenance, medicine, clothing, and care of such lunatic during his continuance in such asylum, and of the expenses of his burial in case he die therein (*c*), as well as for the removal of such lunatic from such asylum within six days after due notice given in writing by the superintendent of such asylum; and such lunatic not being a pauper shall have the same accommodation in all respects as the pauper lunatics.

(*a*) Where committee of visitors agree to receive lunatic paupers belonging to another county or borough, under the powers of this section, and fix (under sect. 54 of this Act) a greater weekly sum than is charged by them in respect of lunatics sent from places which have contributed to the asylum, the excess of payment may be

applied to a building and repair fund. See 25 & 26 Vict. c. 111, s. 6, *post*, 670.

(*b*) As to orders for admission of private patients, etc., see 25 & 26 Vict. c. 111, ss. 23-37, *post*.

(*c*) As to notice of death of private patient to be given to relation or relations, see 25 & 26 Vict. c. 111, s. 25, *post*.

Sect. 44. No visitor of any asylum shall have or take, or be capable of having or taking, any interest or concern whatsoever, either in his own name or in the name of any other person, in any contract or agreement to be made under the authority of this Act or in anywise relating to or connected with such asylum, or shall for any design or plan he may deliver or produce, receive any benefit or emolument whatever, or otherwise have or take any benefit or emolument whatsoever from or out of the funds of the asylum : Provided always, that this enactment shall not extend to any such interest, benefit, or emolument, which any visitor may have or derive by reason of his being a shareholder of any joint stock company established by Act of Parliament or by charter, with which any contract may be entered into on behalf of such asylum, or which may otherwise receive any benefit or emolument out of the funds of the asylum ; provided that no contract or dealing between such company and the visitors of such asylum be at or upon rates or terms more advantageous to such company than in the case of contracts or dealings by such company with other parties.

2. *County and Public Lunatic Asylums, etc.*

No visitor to have any interest in any contract or agreement.

Sect. 45. Every committee of justices or visitors shall submit all agreements for uniting for the purposes of this Act, and all contracts under this Act, for the reception of the pauper lunatics of any county or borough, or any of them, into any asylum, registered hospital, or licensed house, or for the use and occupation of all or any part of any such hospital or licensed house, and all plans for building or providing or enlarging or improving any asylum for pauper lunatics, and all contracts for purchases of lands or buildings for any such purpose, to the commissioners in lunacy (a), who shall make such inquiries in reference thereto, and to the amount of the accommodation requiring to be provided, as they may deem proper, and shall report thereon in writing to one of her Majesty's principal secretaries of state, and such committee shall submit to one of such secretaries of state estimates of the cost and expense of carrying into execution such plans, and no such agreement, contract, or plan shall be carried into effect until the same has been approved by such secretary of state in writing under his hand.

Plans, etc., to be submitted to commissioners in lunacy, and approved by secretary of state.

#### *How Moneys to be raised for providing Asylums.*

Sect. 46. In order to pay and defray the moneys, costs, and expenses payable for any of the purposes of this Act, or the said Acts hereby repealed, by any county, the justices of such county at any general or quarter sessions for the same may and shall assess and tax a general county rate or rates upon such county, and may and shall fix a sum or rate to be contributed by all places whatsoever within such county (other than any borough being within such county or by this Act for the purposes thereof annexed thereto), and whether such places be or be not liable to contribute to an ordinary county rate ; and in order to pay and defray the moneys, costs, and expenses payable as aforesaid by any borough, the council of such borough may and shall assess a general borough rate in the nature of a county rate upon such borough, and the said rates shall be collected, levied, and recovered in the same manner, and by the same powers, authorities, ways, and means, and under the same penalties, as any ordinary rate for such county or borough respectively may by law be collected, levied, and recovered ; and the moneys, costs, and expenses to be paid and contributed by any county or borough for the purposes of this Act shall be paid by the treasurer of such county or borough, out of the rates aforesaid, to the treasurer of the asylum to which such county or borough shall either alone or jointly pay

Provisions for raising moneys required for the purposes of this Act by county and borough rates.

(a) With all plans submitted to the commissioners under this section, an estimate of the cost and expense

of carrying such plans into execution must be also submitted, 25 & 26 Vict. c. 111, s. 5, *post*, 670.



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or contribute: Provided always, that it shall be lawful for the council of any borough, if they think fit, to direct that any moneys payable for the purposes of this Act, or any part thereof, shall be paid out of the borough fund of such borough, and such moneys shall be paid by the treasurer of such borough out of such fund accordingly.

Power for justices of counties and councils of boroughs to raise money by mortgage of the rates.

Sect. 47. It shall be lawful for the justices of every county in general or quarter sessions assembled, or the major part of them, such major part not being less than five, and for the council of every borough, from time to time to borrow and take up on mortgage of the rates to be made under this Act for such county or borough, or on mortgage of such rates together with all other rates or funds, or any of them, of the same county or borough, all or any of the moneys required for paying and defraying any such moneys, costs, and expenses, as aforesaid, payable by such county or borough; and such money may be so raised at any rate of interest not exceeding five pounds per centum per annum, and every such mortgage may be made by an instrument in the form contained in the schedule B. hereunto annexed, or to that or the like effect, and shall be executed in the case of a county by the chairman and two or more other justices present at the time of making such mortgage, and in the case of a borough by affixing the common seal of the borough thereto; and every such mortgage shall be effectual for securing to the person advancing the sum of money in such mortgage expressed to be advanced, his executors, administrators, and assigns, the repayment thereof, with interest for the same, after such rate and at such time and in such manner as in such mortgage provided; and the said mortgages shall be numbered in the order of succession in which they are granted; and copies or extracts of all such mortgages shall be kept by the clerk of the peace, or other proper officer having the custody of the records of the quarter sessions of such county or of the records of such borough, as the case may be; and every person to whom any such mortgage has been made under the Act hereby repealed or any former Act, or is made under this Act, his executors or administrators, is hereby empowered, by endorsing his or their name or names on such mortgage, to transfer the same, and his or their right to the principal money and interest thereby secured, unto any person, and every assignee under this Act or any former Act of any such mortgage, his executors and administrators, may in like manner transfer the same again, and so *toties quoties*; and the persons to whom such mortgages or such transfer thereof are made, their executors and administrators, shall be creditors upon the rates and funds thereby expressed to be mortgaged in an equal degree one with another, and shall not have any preference or priority other than is provided under the powers of this Act.

Power to public works loan commissioners to lend money for purposes of this Act.

Sect. 48. It shall be lawful for the justices and council of any county and borough respectively to make application for any advance of any sum necessary for the purposes of this Act, or the said Acts hereby repealed, to the commissioners acting in the execution of an Act of the session holden in the fourteenth and fifteenth years of her Majesty, chapter twenty-three, "to authorize for a further period the Advance of money out of the Consolidated Fund to a limited amount for carrying on Public Works and Fisheries, and Employment of the Poor," and any Act or Acts amending or continuing the same, and the said commissioners are hereby empowered, if they think fit, to make such advance upon the security of such mortgage as aforesaid.

Provision for the payment of the interest on the mortgages, and of a portion of the principal in each year.

Sect. 49. The said justices or council, as the case may be, shall in every year charge the rates or funds of such county or borough with the sum for the time being required to pay the interest of the money borrowed on any mortgages under this Act or any former Act, or such of them as for the time being remain unpaid, and also with the payment of a further sum, not less than one thirtieth part of the whole of such

mortgages at the time of the same being first made, and such sums shall be applied under the direction of the said justices or council in discharge of the interest on the said mortgages or such of them as for the time being remain unpaid, and of so many of the principal sums owing on the said mortgages for the time being remaining unpaid, as such sums after payment of the interest as aforesaid will extend to discharge, until the whole of the principal moneys for which such mortgages shall have been made, and the interest thereof, shall be fully paid and discharged; and the said justices and council, as the case may be, are and is hereby required to fix one or more days in each year on which such payment shall be made, and shall make orders for assessments in due time, so as to provide for such payments being regularly made; and the said justices or council, as the case may be, shall, by agreement with the parties, or others advancing any money for the purposes of this Act, determine the order of priority in which the several sums advanced shall be respectively discharged; and the justices of every county and the council of every borough so borrowing money on mortgage as aforesaid are and is hereby required to appoint a proper person to keep an exact and regular account of all receipts and payments in respect of principal moneys borrowed or taken up as aforesaid under this Act or any former Act, and the interest thereof, in a book or books separate and apart from all other accounts, and the said book and books, duly adjusted and settled up to the time being, to deliver annually, in the case of a county into court at some general or quarter sessions for such county, and in the case of a borough to the council of the borough, at such time as such council shall appoint; and the justices for every such county at such sessions, and the council for every such borough, are and is hereby required carefully to inspect all such accounts, and to make such orders for carrying the several purposes aforesaid into execution as to them shall seem meet.

Sect. 50. Provided always, that the justices of every county and the council of every borough borrowing money as aforesaid shall make provision by means of the rates which they are hereby respectively authorized to make, and by the orders and directions which they are hereby authorized to give, that the whole principal money to be borrowed under the authority of this Act by such county or borough, and all interest for the same, shall be fully paid and discharged within a time to be limited by such justices or council, not exceeding thirty years from the time of borrowing the same.

Sect. 51. No person lending money to any justices of any county or the council of any borough, and taking a mortgage for securing repayment of the same, executed in manner directed by this Act, and purporting to be made under the authority of this Act, shall be bound to require proof that the several provisions of this Act or of any former Act or Acts have been duly complied with; and if there be an order of the justices of any county in general or quarter sessions, or of the council of any borough making application for the loan, and any mortgage have been thereupon duly executed, either before or after the passing of this Act, as by any Act then in force or this Act is provided, the justices or council (as the case may be) shall have and be deemed to have had full power to levy the rates so mortgaged for repayment of the money so borrowed with interest, notwithstanding that the provisions of this Act or any former Act or Acts may not have been complied with; and it shall not be competent to any ratepayer or other person to question the validity of any such rate or mortgage on the ground that such provisions had not been complied with.

Sect. 52. Provided also, that in every case in which any moneys have been borrowed under the powers of any former Act or this Act, it shall be lawful for the justices of the county or council of the borough for

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Provision to be made for paying money borrowed within a limited time not exceeding thirty years.

Persons lending money on mortgage of rates, etc., not bound to give proof that notices have been given, etc.

Power to raise money to pay of sums already borrowed.

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which such moneys shall have been borrowed (with the consent of the parties to whom the same shall be owing), to pay off the moneys so borrowed, and to raise and borrow the moneys necessary for that purpose, and also to repay the said last-mentioned moneys and the interest thereof, under the powers of this Act, as if such moneys were borrowed under the powers hereinbefore contained; but so, nevertheless, that all moneys borrowed shall be discharged within thirty years from the time of first borrowing the same.

*Regulation and Management of Asylums, and Appointment of Officers.*

Visitors to submit general rules to the secretary of state, and, subject to such general rules, to make regulations and determine diet of lunatics.

Sect. 53. Every committee of visitors shall, within twelve months after the passing of this Act, in the case of every asylum already established and general rules for the government whereof have not been already submitted to one of her Majesty's principal secretaries of state, and within twelve months after the completion of every asylum hereafter established, submit the existing general rules, or general rules to be prepared by such committee, for the government of the asylum under their superintendence, to one of her Majesty's principal secretaries of state for his approval; and such rules, when approved by him, shall be printed, abided by, and observed; and every such committee shall have power, with the like approbation, to alter and vary such rules from time to time as they think necessary; and every such committee shall make from time to time such regulations and orders as they think fit, not inconsistent with the general rules for the time being in force for the management and conduct of the asylum, and in such regulations there shall be set forth the number and description of officers and servants to be kept, the duties to be required of them, and the salaries to be paid to them respectively; and every such committee shall from time to time determine the diet of the patients; and in and by such regulations such committee may direct that any number of beds in such asylum, and in such respective parts thereof as such committee may think fit, shall be always reserved for such cases as in and by such regulations shall be in this behalf mentioned; and in such case such asylum shall for the purposes of this Act, as respects the admission of all cases not within the description or class for which such beds are reserved, be deemed full when there are no vacant beds in such asylum except those so reserved, but nevertheless it shall be in the power of the committee of visitors of such asylum for the time being to fill the beds so reserved as they may deem expedient; and any such committee may, if they see fit, by any such regulations or order, exclude from admission into the asylum persons afflicted with any disease or malady which such committee may deem contagious or infectious, and persons coming from any district or place in which any such disease or malady may be prevalent.

Visitors to fix weekly rate to be paid for maintenance of each lunatic, not to exceed 14s. per week.

Sect. 54. Every committee of visitors shall fix a weekly sum to be charged for the lodging, maintenance, medicine, clothing, and care of each pauper lunatic confined in such asylum, of such amount that the same may be sufficient to defray the whole expense of the lodging, maintenance, care, medicine, and clothing, and other expenses requisite for each pauper lunatic (a), and that the total amount of such weekly sums, after defraying such expenses, may also be sufficient to pay the salaries of the officers and attendants, and such committee may from time to time alter the amount of such weekly sum as occasion may require: Provided always, that any such committee may, if they think fit, fix a greater weekly sum to be charged as aforesaid in respect of pauper lunatics other than those sent to such asylum from or settled in some parish or place situate in any county or borough to which such asylum belongs; provided also, that such sum shall in no case exceed the rate of fourteen shillings per week; but if the aforesaid rate of fourteen shil-

(a) See note (a) to sect. 43 of this Act, *ante*, 618.

lings be found insufficient for the purposes aforesaid, it shall be lawful for the major part of the justices of the county or borough, or of each county or borough to which such asylum may belong, present at any general or quarter sessions for such county, or at a special meeting of the justices of such borough, or each such county or borough respectively, to make such addition to such rate as to them respectively shall seem fit and necessary, and to make an order or orders accordingly, which order or orders shall be signed by the clerk of the peace for the county, or clerk to the justices for the borough, and forthwith published in some newspaper commonly circulated within such county or borough.

Sect. 55. The committee of visitors of every asylum shall appoint a chaplain for the same, who shall be in priest's orders, and shall be licensed by the bishop of the diocese, and the licence of any such chaplain as aforesaid shall be revocable by the bishop whenever he shall think fit; and such chaplain, or his substitute approved by the visitors, shall perform and celebrate, in the chapel of or in some convenient place within or belonging to such asylum, divine service according to the rites of the Church of England as established by law, on every Sunday, Christmas Day, and Good Friday, and shall also perform and celebrate such service within the said asylum at such other times, and also such other services according to the rites of the Church of England as established by law at such times, as the visitors shall direct (a); and if any patient be of a religious persuasion differing from that of the Established Church, a minister of such persuasion, at the special request of such patient, or his friends, shall, with the consent of the medical officer of such asylum, and under such regulations as he shall direct, be allowed to visit such patient at proper and reasonable times; and the committee of visitors of every asylum shall appoint a medical officer, who shall be resident (b) in such asylum, and who shall not be clerk or treasurer of such asylum, and a clerk and treasurer, and such other officers and servants for the asylum as the committee may think fit; and the committee shall have power to remove the chaplain, medical officer, clerk, and treasurer, or any other officer or servant, and shall from time to time, upon every vacancy, by death, removal, or otherwise, in the office of the chaplain, medical officer, clerk, or treasurer of the asylum, appoint some other person to such office, subject to the conditions and restrictions affecting the original appointment to such office, and may from time to time fill up or not, as in their discretion they may think fit, vacancies among other officers and servants of the asylum; and the committee shall, if they think fit, have power to appoint a visiting physician or surgeon to every such asylum, and shall from time to time appoint the medical officer or one of the medical officers (if more than one) of the asylum, or where there is a separate medical officer of each division, then the medical officer or one of the medical officers (if more than one) of each division, to be the superintendent of the asylum, or of such respective division thereof, and may remove any such officer from being such superintendent, and such superintendent shall be resident in the asylum; and the committee shall from time to time fix the salaries and wages to be paid to the officers and servants of the asylum; Provided always, that it shall be lawful for the said committee, with the sanction and approbation of one of her Majesty's principal secretaries of state, to appoint any person other than such medical officer to be such superintendent: Provided also, that where, on the tenth day

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If the rate be found insufficient, justices in quarter sessions may increase it.

Visitors to appoint a chaplain.

Patients allowed the visits of any minister of their own persuasion.

Visitors to appoint medical officer, clerk, and treasurer, and such other officers and servants as they think fit.

(a) See *Reg. v. Middlesex Justices*, 2 Q. B. 433.

(b) It is a sufficient compliance with this section if the house be conveniently near that portion of the

buildings occupied by the patients, though detached and separated therefrom by a boundary wall. (*Congreve v. Upton (overseers)*, 4 B. & S. 857; 10 *Jur.* (N. S.) 538.)

2. *County and Public Lunatic Asylums, etc.*

Clerk of asylum to transmit to commissioners in lunacy information of dismissal of attendants.

Visitors may grant superannuations to the superintendent, etc., not exceeding two-thirds of their salaries.

Clerk of the asylum to keep account of moneys paid and received, and send abstract thereof annually to secretary of state and commissioners in lunacy.

of February, 1853, any person, other than a resident medical officer, was the superintendent of any asylum, such person may continue to be such superintendent as if this Act had not been passed, unless and until the committee otherwise direct.

Sect. 56. The clerk of every asylum shall, within one week after the dismissal for misconduct of any nurse or attendant employed in such asylum, transmit to the commissioners in lunacy, by the post, information in writing under his hand of such dismissal, and of the cause thereof; and every such clerk neglecting to transmit such information to the said commissioners within one week after the dismissal of any such nurse or attendant shall for every such offence forfeit any sum not exceeding ten pounds.

Sect. 57. In case any superintendent, chaplain, matron, or any officer or servant of any asylum, become, from confirmed sickness, age, or infirmity, incapable of executing the office in person, or have been an officer or servant in the asylum for not less than twenty years, (a) and be not less than fifty years of age, it shall be lawful for the committee of visitors of such asylum, if in their discretion they think fit so to do, but not otherwise, to grant to such superintendent, chaplain, matron, (b) or other officer or servant such annuity by way of superannuation as they in their discretion think proportionate to the merits and time of service of such superintendent, chaplain, matron, or other officer or servant (whether incapable from sickness, age, or infirmity, or retiring from long service and age), and every such annuity shall be payable out of the rates lawfully applicable to the building or repairing of such asylum: Provided always, that the annual amount paid by way of superannuation to any retired superintendent, chaplain, matron or other officer or servant of any asylum shall not exceed the amount of two-thirds of the salary payable at the time of his or her retirement, and that no such superannuation shall be granted unless notice of the meeting at which the same shall be granted, and of the intention to determine thereat the question of such superannuation, have been given, in such manner and so long before the time appointed for such meeting as is hereinbefore provided with respect to notices of meetings of committees of visitors, nor unless three visitors concur in and sign the order granting the same.

Sect. 58. The clerk of every asylum shall keep all books, documents, and instruments which the visitors of the asylum are required to keep or direct to be kept, and shall also keep an account of all moneys received or paid on account of the asylum, either to or by the treasurer of the asylum or otherwise, and shall in the month of March in every year send an abstract of such account for the year previous ending on the thirty-first day of December to one of her Majesty's principal secretaries of state, and to the clerk or clerks of the peace of the county or borough, or of each county or borough, to which the asylum shall belong, and also to the commissioners in lunacy, such abstract to contain such particulars and be in such form as the commissioners in lunacy may direct; and such commissioners shall, within one month from the receipt of

(a) See 25 & 26 Vict. c. 111, s. 13, *post*, 672, under which these powers of granting annuities by way of superannuation may be exercised when any such person has been an officer or servant for not less than fifteen years; but no annuity granted under the provisions of that Act, or of this Act, shall be chargeable on or payable out of the rates of any county, until confirmed by the general or quarter sessions.

(b) Where the offices of superintendent and matron of an asylum are held by man and wife, and an order has been made, under this Act, granting superannuation to the superintendent, the committee of visitors may, subject to certain conditions and provisions, grant an annuity by way of superannuation to the matron: 25 & 26 Vict. c. 111, s. 13, *post*, 672.

such abstract, cause a copy thereof to be laid before both houses of Parliament.

Sect. 59. The treasurer of every asylum shall keep accounts of all moneys received and paid by him.

Sect. 60. The committee of visitors of every asylum shall, previously to the month of March in every year, audit the accounts of the treasurer and clerk of such asylum, and shall report the same to the next general or quarter sessions of the county or each of the counties, and to the council of the borough or each of the boroughs, to which the asylum wholly or in part belongs.

Sect. 61. Not less than two members of every committee of visitors shall together, once at the least in every two months, inspect every part of the asylum of which they are visitors, and see and examine, as far as circumstances will permit, every lunatic therein, and the order and certificate for the admission of every lunatic admitted since the last visitation of the visitors, and the general books kept in such asylum, and shall enter in a book to be kept for that purpose any remarks which they may deem proper in regard to the condition and management of such asylum and the lunatics therein, and shall sign such book upon every such visit.

Sect. 62. The committee of visitors of every asylum shall in every year lay before the justices of every county and borough to which such asylum wholly or in part belongs, at the court of general or quarter sessions to be holden next after the twentieth day of December in every year for such county, or at a special meeting of the justices of such borough to be holden within twenty days after the twentieth day of December in every year, a report in writing of the state and condition of such asylum, and as to its sufficiency for the proper accommodation of the number of lunatics for whom it may be requisite to provide accommodation, and as to the management of such asylum, and the conduct of the officers and servants thereof, and the care of the patients therein, and such committee may in such report make such remarks or observations in relation to any matters connected with such asylum as they may think fit; and the clerk to such committee shall transmit a copy of such report to the commissioners in lunacy, and if any such clerk neglect so to do for twenty-one days after the laying of such report before the justices of any county or borough, he shall for such offence forfeit any sum not exceeding ten pounds.

Sect. 63. The clerk of every asylum shall, on the first day of January and the first day of July in every year, prepare a list of all pauper lunatics then in such asylum, according to the form in Schedule (C.) No. 1 to this Act annexed, and within fifteen days after such list shall have been prepared, one copy thereof shall be laid by such clerk before the visitors of the asylum, and another shall be transmitted by him to the clerk of the peace of every or any county and to the clerk to the justices of every or any borough to which such asylum solely or jointly belongs, to be by him laid before the justices of such county or borough, and another copy of such list shall within the same time be transmitted by such clerk to the commissioners in lunacy; and the clerk of every asylum receiving private patients shall also on the first day of January and first day of July in every year prepare a list containing the Christian names and surnames of all the private patients in such asylum in the form in schedule (C.) No. 2 to this Act annexed, and shall within fifteen days after such list shall have been prepared transmit the same to the commissioners in lunacy; and shall also within the same time transmit to such clerk of the peace and clerk to the justices as aforesaid, for the purposes aforesaid, a certificate under his hand of the number of such private patients of each sex.

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Treasurer to keep accounts.

Visitors to audit accounts.

Two visitors at least to visit once in every two months every asylum.

Annual reports to be made by committees of visitors to justices at quarter sessions, etc., and copies sent to commissioners in lunacy.

Lists of pauper patients in asylums to be made half-yearly and laid before visitors, and copies transmitted to clerks of the peace and commissioners in lunacy.

Lists of private patients to be sent half-yearly to the commissioners.

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Clerks of boards of guardians, and overseers where no guardians, to make annual returns of pauper lunatics.

Sect. 64. The clerk of the board of guardians of every union, and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, shall, on the first day of January in every year, or as soon after as may be, make out and sign a true and faithful list of all lunatics chargeable to the union or parish in the form in schedule (D.) hereunto annexed, and shall, on or before the first day of February next succeeding, lay one copy of such list before the visitors of the asylum or before the visitors of each asylum (if more than one) of the county or borough in which such union or parish is situate, and shall transmit one copy of such list to the clerk of the peace of the county, or the clerk to the justices of the borough within which the union or parish to which each such lunatic is chargeable is situate, to be by him laid before the justices acting for such county at their next general or quarter sessions, or before the justices of such borough, and another copy of such list to the commissioners in lunacy, and another copy thereof to the poor law board; and any such clerk or overseer neglecting to make out and sign such list, or to transmit copies thereof, as herein directed, shall for every such offence forfeit any sum not exceeding twenty pounds.

Power for medical persons, guardians and overseers of unions and parishes, to visit pauper patients of such unions and parishes confined in any asylum. (a)

Sect. 65. Any physician, surgeon, or apothecary to be appointed by the guardians of any union or parish, or the overseers of any parish, and also the guardians of any union or parish, and the overseers of any parish, shall be permitted, whenever they see fit, between the hours of eight in the morning and six in the evening, to visit and examine any or every pauper lunatic chargeable to such union or parish confined in any asylum, registered hospital, or licensed house: Provided always, that if the medical officer of any asylum be of opinion that it will be injurious to any lunatic to permit such visit and examination, and such medical officer state in writing the reasons why such lunatic should not be visited and examined, and sign such statement, and deliver the same to the person or persons so requiring to visit and examine such lunatic, then and in such case it shall be lawful for such medical officer to refuse such visit and examination; and in every such case such medical officer shall forthwith enter in the medical journal the reasons set forth in such statement for such refusal, and shall sign such entry.

*Provisions concerning Visitation, (b) Confinement, Removal, (c) and Discharge of Lunatics.*

Every pauper lunatic not in an asylum, registered hospital, or licensed house, to be visited once a quarter by the medical officer of the parish or union, and list of such lunatics to be sent to commissioners in lunacy.

Sect. 66. Every pauper lunatic not in an asylum, or a hospital registered or a house licensed for the reception of lunatics, shall be visited once in every quarter of a year (reckoning the several quarters of the year as ending on the thirty-first day of March, the thirtieth day of June, the thirtieth day of September, and the thirty-first day of December,) by the medical officer of or for the parish or union or district of a parish or union in which such lunatic is resident; and such medical officer shall be paid the sum of two shillings and sixpence for each such quarterly visit to any pauper not being in a workhouse, which sum shall be paid

(a) The 25 & 26 Vict. c. 111, s. 34, *post*, provides that the superintendent of every asylum shall, once at least in every half year, transmit to the guardians or overseers a statement of the condition of every pauper lunatic chargeable to the union or parish.

(b) By the 8 & 9 Vict. c. 100, s. 110, *post*, and the 25 & 26 Vict. c. 111, s. 30 *post*, provisions are made for the visitation of asylums and

gaols, by the commissioners in lunacy; and by the 8 & 9 Vict. c. 100, s. 111, *post*, and the 25 & 26 Vict. c. 111, s. 31, *post*, provisions are made for the like visitation of workhouses.

(c) By the 25 & 26 Vict. c. 111, ss. 31 to 33, *post*, provisions are made for the removal of lunatics in workhouses, and of single pauper lunatics, to asylums, by order of the commissioners in lunacy.

by the same persons, and be charged to the same account as the relief of such pauper; and within seven days after the end of every such quarter such medical officer shall prepare and sign a list according to the form in the schedule (E.) (a) to this Act of all such lunatics, and shall state therein whether in the opinion of such medical officer all or any of such lunatics are or are not properly taken care of, and may or may not properly remain out of an asylum (b), and such medical officer shall within the time aforesaid deliver or send such list to the clerk to the guardians of such parish or union, or if such parish be not under a board of guardians to one of the overseers thereof; and the forms for such lists shall be from time to time furnished to the medical officer of every parish under a board of guardians, and to the medical officers of every union, by the guardians of such parish or union; but nothing in this enactment shall be taken or construed to relieve any medical officer from any obligation by this Act imposed upon him to give notice to a relieving officer or overseer where it appears to such medical officer that any pauper lunatic ought to be sent to an asylum; and such clerk or overseer receiving any such list as aforesaid shall, within three days after the receipt thereof, transmit the same to the commissioners in lunacy, and a copy thereof to the clerk to the visitors of the asylum for the county or borough in which the parish or union for which he is clerk or overseer is situate; and every such medical officer, clerk, or overseer failing to comply with this enactment shall for every such offence forfeit any sum not exceeding twenty pounds nor under two pounds.

Sect. 67. Every medical officer of a parish or union who shall have knowledge that any pauper resident in such parish, or in any parish within the district of such medical officer, (c) is or is deemed to be a lunatic, and a proper person to be sent to an asylum, shall within three days after obtaining such knowledge give notice thereof in writing to a relieving officer of such parish, or if there is no relieving officer, then to one of the overseers of such parish, and every relieving officer of any parish within a union or under a board of guardians, and every overseer of a parish of which there is no relieving officer, who shall have knowledge, either by such notice or otherwise, that any pauper resident in such parish is or is deemed to be a lunatic, and a proper person to be sent to an asylum, (e) shall within three days after obtaining such knowledge give notice thereof to some justice of the county or borough within which such parish is situate; and thereupon the said justice shall, by an order under his hand and seal, (f) require such relieving officer or overseer to bring such pauper before him, or some other justice of the said county or borough, at such time and place within three days from the time of such notice being given to such justice as shall be appointed by the said order; and the said justice before whom such pauper shall be

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Provision for  
sending pauper  
lunatics to  
asylums. (d)

(a) This list must now be in the form in the schedule marked (B.) to the 25 & 26 Vict. c. 111, which see *post*; see also 25 & 26 Vict. c. 111, s. 21, *post*, 673.

(b) As to lunatics in workhouses, see the provisions of 25 & 26 Vict. c. 111, ss. 8 and 20, *post*, 670, 673; and as to the duties of the visiting committee of the union, or overseers of the parish, in respect of such lunatics, see 25 & 26 Vict. c. 111, s. 37, *post*.

(c) As to persons detained in workhouses, being lunatics or alleged lunatics, see the provisions of 25 & 26 Vict. c. 111, s. 20, *post*, 673. In the event of any person being detained in a workhouse in contravention of

that section, the medical officer shall, for all the purposes of this Act, be deemed to have knowledge that a pauper resident within his district is a lunatic, and must act accordingly. (See *ibid.*)

(d) See *Reg. v. Faversham (Overseers)* cited *post*, 639, n. (c) to sect. 97.

(e) By the 25 & 26 Vict. c. 111, s. 19, *post*, 672, this section is to be construed as if the words "and a proper person to be sent to an asylum" had been omitted.

(f) Sealing is not now necessary. See 18 & 19 Vict. c. 105, s. 15, *post*, 667. And orders theretofore duly signed are made valid though not sealed. (*Ibid.*)



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brought shall call to his assistance a physician, surgeon, or apothecary, and examine such person; and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper, according to the form in schedule (F.) No. 3 to this Act annexed, and such justice be satisfied, upon view, or personal examination of such pauper or other proof, that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, he shall, by an order under his hand according to the form in the said schedule (F.) No. 1 to this Act annexed, direct such pauper to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some hospital registered or some house duly licensed for the reception of lunatics; and such relieving officer or overseer shall immediately convey or cause the said lunatic to be conveyed to such asylum, hospital, or house, and such lunatic shall be received and detained therein: (a) Provided always, that it shall be lawful for any justice, upon notice being given to him as aforesaid, or upon his own knowledge, without any such notice as aforesaid, to examine any pauper deemed to be lunatic at his own abode or elsewhere, and to proceed in all respects as if such pauper were brought before him in pursuance of an order for that purpose; provided also, that in case any pauper deemed to be lunatic cannot, on account of his health or other cause, be conveniently taken before any justice, such pauper may be examined at his own abode or elsewhere by an officiating clergyman of the parish in which he is resident, together with a relieving officer, or if there be no relieving officer an overseer of such parish, and such officiating clergyman, together with such relieving officer or overseer, shall call to their assistance a physician, surgeon, or apothecary; and if such physician, surgeon, or apothecary shall sign a certificate with respect to such pauper according to the said form in the said schedule (F.) No. 3, and if upon view or examination of such pauper such officiating clergyman and such relieving officer or overseer be satisfied that such pauper is a lunatic, and a proper person to be taken charge of and detained under care and treatment, such officiating clergyman, together with such overseer or relieving officer, shall, by an order under their hands according to the said form in the schedule (F.) No. 1, direct such pauper to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some such registered hospital or licensed house as aforesaid, and such relieving officer or overseer shall immediately convey or cause such pauper to be conveyed to such asylum, hospital, or house, and such pauper shall be received and detained therein; (a) provided also, that if the physician, surgeon, or apothecary by whom any such pauper shall be examined shall certify in writing that he is not in a fit state to be removed, his removal shall be suspended until the same or some other physician, surgeon, or apothecary shall certify in writing that he is fit to be removed; and every such physician, surgeon, and apothecary is required to give such last-mentioned certificate as soon as in his judgment it ought to be given; provided also, that where a certificate in the form in the said schedule (F.) No. 3 is signed by the medical officer of the parish or union in which the pauper named therein is resident, as well as by some other person being a physician, surgeon, or apothecary called to the assistance of the justice or clergyman and overseer or relieving officer, as hereinbefore mentioned, such joint certificate, or such two certificates (as the case may be), shall be received by the justice or clergyman and overseer or relieving officer

(a) By 12 & 13 Vict. c. 133, s. 4 (see tit. "*Poor*," Vol. IV.), the removal of any lunatic pauper to an asylum, licensed house, or registered hospital, is not to be deemed an interruption of the residence of such pauper within the meaning of 9 & 10 Vict. c. 66, but the time spent in such

lunatic asylum, licensed house, or registered hospital, shall be wholly excluded from the computation of the time of residence which, according to the provisions of such statute, will exempt a poor person from being removed.

by whom such person is examined as hereinbefore mentioned as conclusive evidence that the person named therein is a lunatic, and a proper person to be taken charge of and detained under care and treatment, and he or they shall make an order in the form in the said schedule (F.) No. 1 accordingly. (a)

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Sect. 68. Every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person wandering at large within such parish or place (whether or not such person be a pauper) is deemed to be a lunatic, shall immediately apprehend and take or cause such person to be apprehended and taken before a justice; and it shall also be lawful for any justice, upon its being made to appear to him by the information upon oath of any person whomsoever that any person wandering at large within the limits of his jurisdiction is deemed to be a lunatic, by an order under the hand and seal of such justice, to require any constable of the parish or place, or relieving officer or overseer of the parish where such person may be found, to apprehend him and bring him before such justice, or some other justice having jurisdiction where such person may be found; and every constable of any parish or place, and every relieving officer and overseer of any parish, who shall have knowledge that any person in such parish or place not a pauper and not wandering at large as aforesaid is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, shall, within three days after obtaining such knowledge, give information thereof upon oath to a justice, and in case it be made to appear to any justice, upon such information or upon the information upon oath of any person whomsoever, that any person within the limits of his jurisdiction not a pauper, and not wandering at large, is deemed to be a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, such justice shall, either himself visit and examine such person and make inquiry into the matters so appearing upon such information, or by an order under his hand and seal direct and authorize some physician, surgeon, or apothecary to visit and examine such person, and make such inquiry, and to report in writing to such justice his opinion thereupon; and in case upon such personal visit, examination, and inquiry by such justice, or upon the report of such physician, surgeon, or apothecary, it appear to such justice that such person is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any relative or other person having the care or charge of him, it shall be lawful for such justice, by an order under his hand and seal, to require any constable of the parish or place, or any relieving officer or overseer of the parish, where such person is alleged to be, to bring him before any two justices of the same county or borough; and the justice or justices (as the case may be) before whom any such person as aforesaid in the respective cases aforesaid is brought, under this enactment, shall call to his or their assistance a physician, surgeon, or apothecary, and shall examine such person, and make such inquiry relative to such person as he or they shall deem necessary; and if upon examination of such person or other proof such justice be satisfied that such person so brought before him is a lunatic, and was wandering at large, and is a proper person to be taken charge of and detained under care and treatment, or such two justices be satisfied that such person so brought before them is a lunatic, and is not under proper care and control, or is cruelly treated or neglected by any person having the

Provision as to lunatics wandering at large, not being properly taken care of, or being cruelly treated, etc.

(a) As to orders, by the commissioners in lunacy, for the removal of lunatics from workhouses and of single pauper lunatics, to county and

borough asylums, see 25 & 26 Vict. c. 111, ss. 31 to 33, *post*, "*Private Asylums*."

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care or charge of him, and that he is a proper person to be taken charge of and detained under care and treatment, and if such physician, surgeon, or apothecary sign a certificate with respect to every such person so brought either before one justice or two justices according to the form in the Schedule (F.) No. 3 to this Act, it shall be lawful for the said justice or justices, by an order under his or their hand and seal or hands and seals, according to the form in the Schedule (F.) No. 1 to this Act, to direct such person to be received into such asylum as hereinafter mentioned, or, where hereinafter authorized in this behalf, into some hospital registered or house licensed for the reception of lunatics, and the said constable, relieving officer, or overseer who may have brought such person before the said justice or justices, or any constable whom such justice or justices may require so to do, shall forthwith convey such person to such asylum, hospital, or house accordingly: Provided always, that it shall be lawful for any justice upon such information on oath as aforesaid, or upon his own knowledge, and alone, in the case of any such person as aforesaid wandering at large and deemed to be a lunatic, or with some other justice, in any other of the cases aforesaid, to examine the person deemed to be a lunatic, at his own abode or elsewhere, and to proceed in all respects as if such person were brought before him or them as hereinbefore mentioned; provided also, that it shall be lawful for the said justice or justices to suspend the execution of any such order for removing any such person as aforesaid to any asylum, hospital, or house for such period not exceeding fourteen days as he or they may deem meet, and in the meantime to give such directions or make such arrangements for the proper care and control of such person as he or they shall consider necessary; provided also, that if the physician, surgeon, or apothecary by whom such person is examined certify in writing that he is not in a fit state to be removed, the removal of such person shall be suspended until the same or some other physician, surgeon, or apothecary certify in writing that such person is fit to be removed; and every such physician, surgeon, and apothecary is hereby required to give such last-mentioned certificate as soon as in his judgment it ought to be given; provided also, that nothing herein contained shall be construed to extend to restrain or prevent any relation or friend from retaining or taking such lunatic under his own care, if such relation or friend shall satisfy the justice or justices before whom the lunatic shall be brought, or the visitors of the asylum in which such lunatic is or is intended to be placed, that such lunatic will be properly taken care of.

Power to justices to order payment of a fee to any physician, etc., called in to examine any person.

Sect. 69. It shall be lawful for any justice or justices causing any person to be examined by any physician, surgeon, or apothecary, under the provisions hereinbefore contained, if he or they think fit so to do, to make an order under his or their hand and seal or hands and seals upon the guardians of the union or parish or the overseers of the parish to which such person is chargeable, under the provisions herein contained, for the payment of such reasonable remuneration to any such physician, surgeon, or apothecary, for the examination of such person, and of all other reasonable expenses in or about the examination of such person, and the bringing him before such justice or justices, and in case he be ordered to be conveyed to any asylum, registered hospital, or licensed house, of conveying him thereto, as to such justice or justices may seem proper.

Penalties on medical officers, overseers, etc., omitting to give notice as aforesaid.

Sect. 70. If any medical officer of any parish or union omit for more than three days after obtaining knowledge of any pauper resident in such parish, or in any parish within his district, being or being deemed to be lunatic, and a proper person to be sent to an asylum, to give such notice thereof as is hereinbefore required, or if any relieving officer of any parish, or any overseer of any parish of which there is no relieving officer, omit for more than three days after obtaining knowledge of any

pauper resident in such parish, being deemed to be a lunatic, and a proper person to be sent to an asylum, to give notice thereof to a justice as hereinbefore required, or if any constable, relieving officer, or overseer omit to apprehend and take before a justice, as hereinbefore required, any person wandering at large and deemed to be a lunatic, or omit for three days after obtaining knowledge that any person deemed to be a lunatic (not a pauper and not wandering at large) is not under proper care and control, or is cruelly treated or neglected by any person having the care or charge of him, to give information thereof to a justice as hereinbefore required, such medical officer, relieving officer, overseer, or constable, as the case may be, shall for every such offence forfeit any sum not exceeding ten pounds.

Sect. 71. If any relieving officer, overseer, or constable by this Act required to convey any person to any asylum, registered hospital, or licensed house, in pursuance of any order under this Act, refuse or wilfully neglect to execute such order with all reasonable expedition, he shall for every such offence forfeit any sum not exceeding ten pounds.

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Sect. 72. Every such order by a justice or justices, or by a clergyman and overseer or relieving officer as aforesaid, for the reception of a lunatic into an asylum, may authorize his admission, not only into any lunatic asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, but also into any other asylum for the reception of pauper lunatics of such county or borough, and also into any asylum for any other county or borough, or any hospital registered or house licensed (a) for the reception of lunatics; but every lunatic shall under every such order be sent to an asylum of the county or borough in which the parish or place from which he is sent is situate, unless there be no such asylum, or there be a deficiency of room, or unless there be some special circumstances by reason whereof such lunatic cannot conveniently be taken to such asylum, which deficiency of room or special circumstances shall be stated in the order for the reception of such lunatic into any asylum other than such asylum as aforesaid, or into any registered hospital or licensed house; and no lunatic shall be sent to any registered hospital or house licensed for the reception of lunatics, by virtue of such order, except there be no such asylum, or no such asylum in which he can be received, or there be some special circumstances by reason whereof he cannot be taken thereto, which shall be stated in like manner as aforesaid.

Penalty on relieving officers, overseers, and constables, delaying to execute orders.

Orders of justices, etc., may extend to authorize reception into hospitals or licensed houses, but lunatics to be always sent to asylum, if circumstances permit (b).

Sect. 73. No pauper shall be received into any asylum, registered hospital, or licensed house (save under the provisions herein contained with respect to removal of lunatics) without an order according to the form required in the said schedule (F.) No. 1 (c), under the hands of one justice, or under the hands of an officiating clergyman, and of one of the overseers or the relieving officer of the parish or union from which such pauper is sent as aforesaid, together with such statement of particulars as is contained in the same schedule, nor without a medical certificate

No pauper to be received into any asylum without a certain order and certificate.

(a) The powers of commissioners and visitors, and other provisions relating to licensed houses, under this Act, continue applicable to such houses after the expiration of the license, while any patients are there; 18 & 19 Vict. c. 105, s. 9, *post*, 665.

(b) By 25 & 26 Vict. c. 111, s. 8, *post*, 670, the visitors of any asylum and the guardians of any parish or union within the district for which the asylum has been provided, may arrange,

subject to the approval of the Poor Law Board, for the reception of a limited number of chronic lunatics, in the workhouse of the parish or union. See section and notes thereon, *post*, 670.

(c) The order must now contain, wherever it be possible, the name and address of one or more relations of the lunatic, 25 & 26 Vict. c. 111, s. 25, *post*, 673.

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according to the form in the said Schedule (F.) No. 3 (a) signed by one physician, surgeon, or apothecary who shall have personally examined him not more than seven clear days previously to his reception; and every person who receives any pauper into any asylum without such order and medical certificate (save under any of the said provisions) shall be guilty of a misdemeanour.

No person to be received into an asylum, except under the provisions of this Act without an order and two medical certificates (a).

Sect. 74. No person, not a pauper, shall be received into any asylum (save under the provisions herein contained) without an order under the hand of some person according to the form in Schedule (F.) No. 2 to this Act annexed, together with such statement of particulars as is contained in the same schedule, nor without the medical certificate, according to the form and containing the particulars required in Schedule (F.) No. 3, annexed to this Act, of two persons, each of whom shall be a physician, surgeon, or apothecary, and shall not be in partnership with or an assistant to the other, and each of whom shall separately from the other have personally examined the person to whom it relates, not more than seven clear days previously to the reception of such person into such asylum, and such order as aforesaid may be signed before or after the medical certificates or either of them; and every person who receives any person, not a pauper, into any asylum, save under the provisions herein contained, without such order and medical certificates as aforesaid, shall be guilty of a misdemeanour: Provided always, nevertheless, that any person may, under special circumstances preventing the examination of such person by two medical practitioners as aforesaid, be received into any asylum upon the certificate of one physician, surgeon, or apothecary alone, provided that the statement accompanying such order set forth the special circumstances which prevent the examination of such person by two medical practitioners; but in every such case two other such certificates shall, within three clear days after the reception of such patient into such asylum, be signed by two other persons, each of whom shall be a physician, surgeon, or apothecary, not in partnership with or an assistant to the other, or the physician, surgeon, or apothecary who signed the certificate on which the patient was received, and shall within such time, and separately from the other of them, have personally examined the person so received as a lunatic; and any person who, having received any person into any asylum as aforesaid upon the certificate of one medical practitioner alone as aforesaid, shall keep or permit such person to remain in such asylum beyond the said period of three clear days, without such further certificates as aforesaid, shall be guilty of a misdemeanour.

Medical certificate to specify facts upon which opinion of insanity has been formed.

Sect. 75. Every physician, surgeon, and apothecary signing any certificate under or for the purposes of this Act, shall specify therein the facts upon which he has formed his opinion that the person to whom

(a) See further provisions as to orders for the reception of private patients, and as to certificates, 25 & 26 Vict. c. 111, ss. 23-27, and 40, *post*, 673.

By sect. 23, no order shall authorize the reception of such patient after the expiration of one calendar month from its date, nor unless the person signing the order have seen the patient within one month prior to its date, nor unless the time and place when such person last saw the patient is stated.

By sect. 24, certain persons are prohibited from signing orders or certificates.

By sect. 25, one or more relations of the patient must be named in the order.

By sect. 26, the order and certificate required for detention of pauper patient shall extend to authorize such detention, though it should afterwards appear the patient is entitled to be classed as a private patient, and *vice versa*.

By sect. 27, further provision is made as to defective certificates.

By sect. 40, provisions are made as to the correspondence of private patients.

such certificate relates is a lunatic, an idiot, or a person of unsound mind, distinguishing in such certificate facts observed by himself from facts communicated to him by others; and no person shall be received into any asylum under any certificate which purports to be founded only upon facts communicated by others (a).

Sect. 76. No physician, surgeon, or apothecary who, or whose father, brother, son, partner, or assistant, shall sign the order for the reception of a patient, shall sign any certificate for the reception of the same patient, and no patient shall be received into any asylum upon or under any certificate signed by any medical officer of such asylum.

Sect. 77. It shall be lawful for any two of the visitors of any asylum, being justices, by an order (b) in writing under their hands and seals, to order any pauper lunatic chargeable to any parish or union within the county or borough or any county or borough to which such asylum wholly or in part belongs, or to such county, and who may be confined in any other asylum, or in any registered hospital or licensed house, to be removed to such first-mentioned asylum; and it shall be lawful for any two of the visitors of any asylum, being justices, in manner aforesaid to order any pauper lunatic to be removed from such asylum to some other asylum, or to some registered hospital or licensed house; but no such lunatic shall be removed as last aforesaid without the consent in writing of two of the commissioners in lunacy, except to an asylum within or belonging wholly or in part to the county within which the asylum from which the lunatic is removed is situate, or the county in some parish of which the lunatic may have been adjudged to be settled, or a registered hospital or licensed house within any such county as aforesaid, or an asylum, registered hospital, or licensed house into which the lunatic can be received under a subsisting contract for the reception of lunatics therein; and it shall be lawful for the justices making any such order in and by the same to direct or require any overseer or relieving or other officer of the parish, union, or county to which such lunatic is chargeable, or to authorize any other person, to execute the same; and every such order and consent shall be made and given respectively in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed, and such order, with such consent in writing (where such consent is required), shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed: Provided always, that no person shall be removed under any such order without a medical certificate, signed by the medical officer of the asylum, or the medical practitioner, or one of the medical practitioners, keeping, residing in, or visiting the hospital or licensed house from which such person is ordered to be removed, certifying that he is in a fit condition of bodily health to be removed in pursuance of such order; and the superintendent or proprietor of such asylum, hospital, or licensed house shall, at the time of delivering the person ordered to be removed to the overseer, officer, or person having the execution of the order for removal, deliver to such overseer or officer, free of any charge for the same, the certificate of such medical officer, and also a copy (certified under the hand of such superintendent or pro-

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Who not to sign certificate for reception of a patient.

Power to two visitors of any asylum, being justices, to order removal of pauper lunatics to or from such asylum (c).

(a) As to defective certificates, see sect. 87 of this Act, *post*, 636, and the provisions of 25 & 26 Vict. c. 111, s. 27, *post*, 674.

(b) See 18 & 19 Vict. c. 105, s. 8, *post*, 665, by which the powers to

order the removal of pauper lunatics given by this section are extended, subject nevertheless to the restriction contained in the next section.

(c) As to licensed houses, see 18 & 19 Vict. c. 105, s. 9, *post*, 665.

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prietor to be a true copy) of the order and certificate under which such person was received into and detained in such asylum, hospital, or licensed house, and the said certificate and certified copies, with one duplicate of the order for removal, shall be delivered by such overseer, officer, or person, to the superintendent or proprietor of the asylum, hospital, or licensed house to which such person is ordered to be removed, or any other officer of such asylum, hospital, or licensed house into whose care such person is delivered.

Pauper lunatics not to be received into any other than the county or borough asylum without endorsement of order by a visitor, and orders not compulsory on hospitals or licensed houses.

Sect. 78. Provided always, that no lunatic being a pauper shall be received under any order made by virtue of this Act into any asylum, other than an asylum belonging wholly or in part to the county or borough in which the parish or place from which such lunatic is sent, or the parish in which he is adjudged to be settled, is situate, except there be a subsisting contract for the reception of lunatics of such county or borough therein, or such borough otherwise contributes to such asylum, unless such order be endorsed by a visitor of such asylum; and it shall not be compulsory on the superintendent of any registered hospital or the proprietor of any licensed house to receive any lunatic under any such order, except in pursuance of any subsisting contract.

Discharge of lunatics from asylums.

Sect. 79. It shall be lawful for any three of the visitors of any asylum, by writing under their hands and seals, to order the discharge of any person detained in such asylum, whether such person be recovered or not, and also for any two of such visitors, with the advice in writing of the medical officer of such asylum, to discharge any person detained therein, or to permit any such person to be absent from the asylum upon trial for such period as such visitors think fit; and it shall be lawful for such visitors to make such allowance to such last-mentioned person, not exceeding what would be the charge for such person if in the asylum, which allowance, and no greater sum, shall be charged for him and be payable as if he were actually in the asylum; and in case any person so allowed to be absent on trial for any period do not return at the expiration of such period, and a medical certificate as to his state of mind, certifying that his detention in an asylum is no longer necessary, be not sent to the visitors, he may, at any time within fourteen days after the expiration of such period, be retaken, as herein provided in the case of an escape.

Overseers and relieving officers to remove lunatics upon notice of discharge, and to be liable to a penalty for refusal or wilful neglect.

Sect. 80. When the visitors of any asylum shall order a pauper lunatic confined therein to be discharged therefrom, it shall be lawful for them, when they shall see occasion, to send notice in writing, signed by their clerk, through the post or otherwise, of their intention to discharge such lunatic, to the overseers of the parish wherein it shall have been adjudged that such lunatic is settled, or, if no such adjudication shall have been made, to the overseers of the parish from which such lunatic shall have been sent to such asylum, unless such lunatic shall be chargeable to the common fund of any union, and in any such last-mentioned case to some one relieving officer of such union; and upon receipt of such notice the overseers or relieving officers respectively shall cause such lunatic, upon his discharge, to be forthwith removed to their parish, or to the workhouse of the union at the cost and charge of their parish or of the common fund of the union, as the case shall require; and any overseer or relieving officer who shall refuse or wilfully neglect to remove such lunatic from the said asylum within the space of seven days after such notice shall have been sent to him shall be guilty of an offence against this Act, and shall forfeit for such offence any sum not exceeding ten pounds, to be recovered as other penalties imposed by this Act are recoverable.

Visitors may discharge a lunatic on the under-

Sect. 81. Where application is made to the committee of visitors of any asylum by any relative or friend of a pauper lunatic confined there-

in, requiring that he may be delivered over to the custody and care of such relative or friend, it shall be lawful for any two of the visitors aforesaid, if they think fit, and upon the undertaking in writing of such relative or friend to the satisfaction of such visitors that such lunatic shall be no longer chargeable to any union, parish, or county, and shall be properly taken care of, and shall be prevented from doing injury to himself or others, to discharge such lunatic.

Sect. 82. It shall be lawful for the commissioners in lunacy, or any two of them, by writing under their hands and seals, (a) to order and direct the removal of any lunatic from any asylum, registered hospital, or licensed house to any other asylum, registered hospital, or licensed house; and every such order shall be made in duplicate, and one duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house from which the patient is removed, and the other shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or licensed house to which the patient is removed, and such order shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, hospital, or licensed house to which he is ordered to be removed.

Sect. 83. If and when any person who signed the order on which any patient (not being a pauper) was received into any asylum (whether or not such patient have since been removed under any order made under this Act or otherwise to any other asylum) shall by writing under his hand direct that such patient be discharged or removed, then and in such case such patient shall forthwith be discharged or removed as the person who signed the order for his reception may direct.

Sect. 84. If the person who signed the order on which any patient (not being a pauper) was received into any asylum be dead, or be incapable, by reason of insanity, absence from England, or otherwise, of giving an order for the discharge or removal of such patient, then the person who made the last payment on account of such patient, or the husband or wife, or (if there be no husband, or the husband or wife be incapable as aforesaid,) the father, or (if there be no father, or he be incapable as aforesaid,) the mother of such patient, or if there be no mother, or she be incapable as aforesaid, then any one of the nearest of kin for the time being of such patient, may, by writing under his or her hand, give such direction as aforesaid for the discharge or removal of such patient, and thereupon such patient shall be forthwith discharged or removed accordingly.

Sect. 85. Provided always, that no patient shall be discharged under either of the two last foregoing provisions if the medical officer of the asylum in which such patient is certify in writing under his hand that in the opinion of such medical officer such patient is dangerous and unfit to be at large, together with the grounds on which such opinion is founded, unless two of the visitors of such asylum, being justices, shall, after such certificate shall have been produced to them, give their consent in writing to such patient's being so discharged; provided that nothing in this enactment shall prevent the transfer of any patient so certified to be dangerous and unfit to be at large from any asylum to any other asylum, or to any registered hospital or licensed house, but in such case the patient shall be placed under the control of an attendant belonging to the asylum, hospital or house from or to which he is about to be removed for

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taking of a relative or friend that he shall no longer be chargeable, and shall be taken care of.

Commissioners in lunacy may order removal of lunatics. (b)

The person who signed the order for the reception of a private patient may order his discharge or removal.

Provision where the person who signed the order for reception is dead or incapable of acting.

Patient not to be discharged where certified to be dangerous, without visitors' consent.

Not to prevent transfer under control of an attendant.

(a) Sealing is now dispensed with, 18 & 19 Vict. c. 105, s. 15, *post*, 667; and previous orders, &c. duly signed, are thereby made valid, though not sealed.

(b) See 25 & 26 Vict. c. 111, ss. 31 to 33, *post*, for provisions as to the removal of lunatics in workhouses and single pauper lunatics, to asylums, by orders of the commissioners.



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Provision authorizing transfer of private and single patients.

the purpose of such removal, and shall remain under such control until such time as the removal has been duly effected.

Sect. 86. Any person, having authority to order the discharge of any patient (not being a pauper) from any asylum, registered hospital, or licensed house, (a) or of any single patient, may, with the previous consent in writing of two of the commissioners, direct, by an order in writing under his hand, the removal of such patient to any asylum, registered hospital, or licensed house, or to the care or charge of any person mentioned or named in such order; and every such order and consent shall be made and given respectively in duplicate, and one of the duplicates shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or house from which or the person from whose care or charge the patient is ordered to be removed, and the other duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or house into which or the person into whose care or charge the patient is ordered to be removed; and such order for removal, together with such consent in writing, shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, registered hospital, or licensed house into which or by the person into whose care or charge he is ordered to be removed: Provided always, that a copy of the order and certificates upon which such patient was received into the asylum, hospital, or house from which he is removed, or as a single patient, by the person from whose care he is removed, certified under the hand of the superintendent or proprietor of such asylum, hospital, or house, or of such person as last aforesaid, to be a true copy, shall be furnished by him free of expense, and shall be delivered, with one duplicate of the said order of removal and consent, to the superintendent or proprietor of the asylum, hospital, or house to which, or to the person to whose care or charge, such patient is removed.

Orders and medical certificates may be amended.

Sect. 87. If after the reception of any lunatic into any asylum it appear that the order or the medical certificate, or (if more than one) both or either of the medical certificates, upon which he was received, is or are in any respect incorrect or defective, such order and medical certificate or certificates may be amended by the person or persons signing the same at any time within fourteen days next after the reception of such lunatic; (b) provided nevertheless, that no such amendment shall have any force or effect unless the same shall receive the sanction of one or more of the commissioners in lunacy.

Persons received into asylums, etc. may be detained till removal or discharge, and in case of escape may be retaken within fourteen days.

Sect. 88. Every person received into any asylum, registered hospital, or licensed house under such order as is required by this Act, accompanied by the requisite medical certificate, may be detained therein until he be removed or discharged as authorized by this Act, and in case of escape may, by virtue of such order and certificate or certificates, be retaken at any time within fourteen days after his escape by the superintendent or proprietor of such asylum, hospital, or house, or any officer or servant belonging thereto, or any other person authorized in writing in this behalf by such superintendent or proprietor, and conveyed to and received and detained in such asylum, hospital, or house.

Every clerk receiving a lunatic into an asylum to make an entry thereof, and to transmit a copy of the order and

Sect. 89. The clerk of every asylum shall, immediately on the admission of any person as a lunatic into such asylum, make an entry with respect to such lunatic in a book to be kept for that purpose, to be called "The Register of Patients," according to the form and containing the particulars specified in the schedule (G.) No. 1 to this Act, except as to

(a) As to licensed houses, see 18 & 19 Vict. c. 105, s. 9, *post*, 665.

(b) See further as to the amendment of certificates, and the power

of the commissioner (in default of such amendment) to order the patient's discharge, 25 & 26 Vict. c. 111, s. 27, *post*.

the form of disorders, the entry as to which is to be supplied by the medical officer of the asylum within one month after the admission of the patient, and after the second and before the end of the seventh clear day (a) from the day of the admission of any person as a lunatic into any asylum shall transmit to the commissioners in lunacy a copy of the order and statement and certificate or certificates on which such lunatic has been so received, together with a statement, to be made and signed by the medical officer of the asylum, not sooner than two clear days after such admission, according to the form in the said schedule (F.) No. 4 to this Act annexed: and any clerk omitting so to make such entry, or to transmit such copy and statement within the time aforesaid, and every medical officer omitting to make or sign such statement, shall for every such offence forfeit any sum not exceeding twenty pounds.

Sect. 90. In every asylum the medical officer thereof shall once in every week enter in a book to be kept for that purpose, to be called "The Medical Journal," a statement according to the form in the said schedule (G.) No. 3, showing the number of patients of each sex then in such asylums, the Christian name and surname of every patient who is or has been under restraint or in seclusion since the last entry, and when and for what period and reasons, and in case of restraint by what means, and the Christian name and surname of every patient under medical treatment, and for what, if any, bodily disorder, and every death, injury, and violence which shall have happened to or affected any patient since the then last preceding entry, and shall also enter into a book to be called "The Case Book," as soon as may be after the admission of any patient, the mental state and bodily condition of every patient at the time of his admission, and also the history from time to time of his case whilst he shall continue in the asylum; and such books shall from time to time be regularly laid before the visitors for their inspection and signature, and every medical officer omitting to make such entries, or any of them, shall for every such offence forfeit any sum not exceeding twenty pounds.

Sect. 91. The clerk of every asylum shall, within three days after every visit to such asylum of two or more of the commissioners in lunacy, transmit to the office of such commissioners a true and perfect copy of any entries of any remarks or observations made by such visiting commissioners in any of the books of such asylum, and every such clerk omitting to transmit as aforesaid any such copy shall for every such offence forfeit any sum not exceeding ten pounds.

Sect. 92. In case of the death of any patient in any asylum (b) a notice and statement according to the form in schedule (F.) No. 5 of the death and cause of the death of such patient, and the name of any person or persons who was or were present at the death, shall be drawn up and signed by the clerk and medical officer of such asylum, and a copy thereof shall be by the clerk transmitted to the registrar of deaths for the district and to the commissioners in lunacy within forty-eight hours of the death of such patient, and also to the relieving officer or the overseers of the union or parish to which such lunatic (if a pauper) was chargeable, and if not a pauper to the person who shall have signed the order for the admission of the lunatic, or who made the last payment on account of such lunatic; (c) and every clerk or medical officer who neg-

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certificate of medical officer of the asylum to commissioners in lunacy.

Weekly journal and case book to be kept in every asylum.

Copies of entries made by commissioners visiting asylums to be sent to the office of commissioners.

In case of the death of a lunatic the cause of death to be stated, and sent to the registrar of deaths, the commissioners in lunacy, and relieving officer or overseers.

(a) The time limited by this section is altered, as to part of the documents to be sent to the commissioners, to "one clear day," by 25 & 26 Vict. c. 111, s. 28; which see *post*.

(b) For provisions as to the burial of pauper lunatics, see 18 & 19 Vict. c. 105, ss. 11, 12, *post*, 666.

(c) Notice of each patient's death

must be given, in a certain form, to the coroner, 25 & 26 Vict. c. 111, s. 44, *post*. Notice must also be sent by post, in a prepaid letter, to the relation, or one of the relations, of such patient named in the order for his or her reception 25 & 26 Vict. c. 111, s. 25, *post*, 674.

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Entries to be made of deaths, discharges, and removals, and notice given to the commissioners in case of the discharge, removal, escape, and recapture of every lunatic.

lects or omits to draw up, sign, or transmit such notice or statement as aforesaid, within the time aforesaid, shall respectively forfeit and pay any sum not exceeding twenty pounds.

Sect. 93. The clerk of every asylum shall, within three clear days after the death, discharge, or removal of any patient, make an entry thereof in the said register of patients, and also in a book to be kept for that purpose according to the form and containing the particulars in the schedule (G.) No. 2 to this Act, and shall also, within three clear days after the discharge, removal, escape, or recapture of any patient, transmit a written notice of such discharge or removal, according to the form in the said schedule (F.) No. 5, or of such escape or recapture, to the commissioners in lunacy; and every such clerk who neglects or omits to make such entry as aforesaid, or transmit such notice as aforesaid within the time aforesaid, shall forfeit and pay any sum not exceeding ten pounds; and every such clerk who shall knowingly and wilfully in such entry untruly set forth any of the particulars required shall be guilty of a misdemeanor.

*As to Expense of Maintenance and Removal, etc., of Pauper and other Lunatics.*

How justices are to proceed where it appears to them that the lunatic has property applicable to his maintenance.

Sect. 94. Where any lunatic shall be sent to an asylum, registered hospital, or licensed house, under any order made by virtue of the authority hereinbefore given to two justices, if it appear to such justices that such lunatic hath an estate applicable to his maintenance, and more than sufficient to maintain his family (if any), it shall be lawful for such justices to make an application in writing under their hands and seals to the nearest known relative or friend of such lunatic, for the payment of the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic; and in case such charges be not paid within one month after such application, it shall be lawful for the same or any other justices, by an order under their hands and seals, to direct a relieving officer or overseer of the parish from which such lunatic shall be sent, or where any property of such lunatic shall be, to seize so much of the money, and to seize and sell so much of the goods and chattels, and to take and receive so much of the rents and profits of the lands and tenements of such lunatic, and of any other income of such lunatic, as may be necessary to pay the charges of the examination, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to the same or any other justices, such charges having been first proved to the satisfaction of the said justices, and the amount set forth in such order; and if any trustee or other person having the possession, custody, or charge of any property of such lunatic, or if the governor and company of the Bank of England, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay the whole or any part thereof to any overseer or relieving officer, to defray the charges set forth in such order the receipt of such overseer or relieving officer shall be a good discharge to such trustee, governor, and company, or other body or person as aforesaid: Provided always, that, notwithstanding it may appear to the said justices that such lunatic hath such estate as aforesaid, it shall be lawful for such justices in the meantime and until such charges as aforesaid shall be paid, in pursuance of such application or order as aforesaid, to make an order on the guardians of the union or parish, or the overseers of the parish, from which such lunatic shall be sent for confinement, for payment of the charges of the removal, lodging, maintenance, clothing, medicine, and care of such lunatic; and such guardians or overseers shall be reimbursed such charges under any order to be made as aforesaid for payment of such charges, out of the property of the lunatic, unless the same

be sooner repaid by some relative or friend of such lunatic in pursuance of such application as aforesaid.

Sect. 95. When any pauper lunatic is confined under the provisions of this Act he shall, for the purposes of this Act be chargeable to the parish from which, or at the instance of some officer or officiating clergyman of which, he has been sent, unless and until such parish shall have established, under the provisions herein contained, that such lunatic is settled in some other parish, or that it cannot be ascertained in what parish such lunatic is settled (*a*); and every pauper lunatic who is chargeable to any parish shall, whilst he resides in an asylum, registered hospital, or licensed house, be deemed for the purposes of his settlement to be residing in the parish to which he is chargeable.

Sect. 96. It shall be lawful for the justice by whom any pauper lunatic is sent to an asylum, registered hospital, or licensed house under the powers of this Act, or for any two justices of the county or borough in which the asylum, registered hospital, or licensed house in which any pauper lunatic is confined is situate, or from any part of which any pauper lunatic has been sent, or for any two justices being visitors of such asylum or licensed house, to make an order (*b*) upon the guardians of the union or parish or the overseers of the parish (if not in a union or under a board of guardians) from which, or at the instance of any officer or officiating clergyman of which, such lunatic is or has been sent for confinement, for payment to the treasurer, officer, or proprietor of the asylum, registered hospital, or licensed house of the reasonable charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in such asylum, hospital, or house, and any such order may be retrospective or prospective, or partly retrospective or partly prospective; and the guardians or overseers on whom such order shall be made shall from time to time pay to the said treasurer, officer, or proprietor the charges aforesaid.

Sect. 97. It shall be lawful for any two justices for the county or borough in which any asylum, registered hospital, or licensed house in which any pauper lunatic is or has been confined (*c*) is situate, or to which such asylum wholly or in part belongs, or from any part of which any pauper lunatic is or has been sent for confinement, at any time to

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Every pauper lunatic to be chargeable to the parish from which he is sent till otherwise adjudged.

Justices to make an order upon the officers of unions and parishes for maintenance of lunatics.

Two justices may inquire into and adjudge the settlement of a lunatic, and order payment of maintenance, etc. accordingly.

(*a*) A Scotchman, having no settlement in England, married an Englishwoman. While they resided together in an English parish she was sent as a lunatic pauper to a lunatic asylum. Held, that the operation of this section is not confined to persons only who have a place of settlement, and that an order adjudicating her to be chargeable to the county under sect. 98, *post*, 641, as a person whose settlement could not be ascertained was good. (*Somerset v. Shipham Overseers*, 3 B. & S. 507.)

(*b*) An order of justices under this section, directing a board of guardians from one of the parishes of which a pauper had been removed to the county lunatic asylum to pay to the treasurer the costs of maintenance of such pauper, is merely an *interim* order, the object of which is to provide for his support until his settlement can be discovered, or, failing that, until the cost of his maintenance is thrown upon the county, and

against such order no appeal lies. (*Kettering Union v. Northampton General Lunatic Asylum*, 34 L. J., M. C. 198; 11 Jur. (N. S.) 99.)

(*c*) Under this section the jurisdiction of justices to adjudicate on settlement and maintenance attaches on a pauper lunatic being found confined in an asylum, and the validity of their order is not affected by the fact that the order of admission was made by a justice having no jurisdiction (*per* Wightman, J., and Mellor, J.); but by Crompton, J., this section must be read in connection with the 67th sect. (*ante*, 627), and applies only to a pauper lunatic lawfully confined. The justices, therefore, must inquire into the validity of the order under which the lunatic was sent to the asylum; and if it has been made without jurisdiction they have no jurisdiction to adjudicate. (*Reg. v. Faversham Overseers*, 2 B. & S. 275; 31 L. J., M. C. 116.)

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inquire into the last legal settlement of such pauper lunatic, and if satisfactory evidence (a) can be obtained as to such settlement in any parish, such justices shall, by order under their hands and seals (b), adjudge such settlement accordingly (c), and order the guardians of the union to which the parish in which such lunatic is adjudged to be settled belongs, or of such parish in case such parish be in a union (d) or be under a

(a) Under the similar provisions of 8 & 9 Vict. c. 126, s. 58 (repealed by this Act), it was held that it cannot be made a valid ground of appeal against an order for the maintenance of a pauper lunatic, that the order adjudicating his place of settlement was made on hearsay evidence only. (*Reg. v. St. Peter's*, 17 Q. B. 630; 21 L. J., M. C. 23.)

A prior order of removal, quashed on appeal upon the question of settlement, is conclusive evidence that the pauper was not then settled in the parish to which he was ordered to be removed, whether the subsequent inquiry be for the adjudication of the settlement and maintenance of a lunatic under the (similar provisions of) 8 & 9 Vict. c. 126, s. 58, or an ordinary case of removal of a pauper. (*Heston v. St. Bride's*, 1 E. & B. 583; 22 L. J., M. C. 65.)

(b) Sealing is not now necessary, 18 & 19 Vict. c. 105, s. 15, *post*, 667; and orders therefore duly signed are valid, though not sealed.

(c) A woman whose husband was irremovable from the parish of A. by reason of a five years' residence, but whose parish of settlement was B., was living apart from him in the parish of C., where she became chargeable as a pauper lunatic; an order under this section, adjudging her last legal settlement to be in B., was held valid, and rightly made upon the parish of the husband's settlement, and not upon that from which he was irremovable. (*Reg. v. St. Clement Danes*, 32 L. J., M. C. 5. See in connection with this case *Leeds v. Wakefield*, cited *post*, 643, note (a) to sect. 102.

A pauper lunatic had resided with her father and mother for more than five years in the respondent parish when her father died, and she continued to reside in the same parish with her mother till October, 1858, when she was sent to the workhouse, where she remained till 24th of January, 1860. In December, 1859, the mother went to reside in another parish, but did not acquire any settlement in her own right. On the 24th January, 1860, the lunatic was sent to the county lunatic asylum. Upon an appeal against an order under this section, adjudging her settlement to be

in the parish in which her father had been settled: Held, that the lunatic being unemancipated continued part of her mother's family, and therefore, her mother having ceased to be irremovable, she also ceased to be irremovable, and the order was rightly made. (*Reg. v. St. Mary, Exeter*, 1 B. & S. 890; 31 L. J., M. C. 77.)

A child of parents not having a settlement, though unemancipated, has a settlement by birth, and the child becoming lunatic, the justices were right to order the costs of removal to, and maintenance in, a lunatic asylum to be borne by the parish of birth (under this section), and not by the county (under sect. 98.) (*Reg. v. Newchurch*, 32 L. J., M. C. 19.)

Where a woman, residing separate from her husband, and in a different parish, is sent to an asylum under this Act, the order for maintenance is properly made on the parish of her husband's settlement (under this section), and not (under sect. 102) on the parish from which the husband is irremovable. (*Reg. v. East Retford*, 3 B. & S. 122; 32 L. J., M. C. 17.)

Where a man has resided six years in a parish, but during three of those years his wife has been confined in a lunatic asylum at his instance, and at the cost of his parish of settlement, and the wife again becomes lunatic, and is sent to an asylum, an order for her maintenance is properly made (under this section) on the parish of settlement, and not (under sect. 102) on the parish of residence. (*Reg. v. St. George's, Bloomsbury*, 4 B. & S. 108.)

See also *Reg. v. St. Giles's*, 30 L. J., M. C. 12, cited *post*, 643.

(d) As to the construction of this clause, see judgment (in error) of the Exchequer Chamber in *Leatham v. Bolton-le-Sands*, 35 L. J., M. C. 62 (reversing the decision below). By this decision it is established that, where a removable pauper is adjudged to be settled in a parish in a union formed under "Gilbert's Act" (22 Geo. 3, c. 83), the order for maintenance should be made on the guardians of the particular parish, and not on the guardians of the union.

The 24 & 25 Vict. c. 55, s. 6, *post*, provides that "the cost of the ex-

board of guardians, and if not, then the overseers of such parish, to pay to the guardians of any union or parish, or the overseers of any parish, all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house, and of all moneys paid by such last-mentioned guardians or overseers to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to the date of such order, and, if such lunatic is still in confinement, also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house, the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and the guardians or overseers on whom any such order is made shall immediately pay to the guardians or overseers to whom the same are ordered to be paid the amount of the expenses and moneys by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid.

2. *County and Public Lunatic Asylums, etc.*

Sect. 98. If any pauper lunatic be not settled in the parish, by which or at the instance of some officer or officiating clergyman of which, he is sent to any asylum, registered hospital, or licensed house, and it cannot be ascertained (a) in what parish such pauper lunatic is settled (b), and if a relieving officer of such first-mentioned parish, or of the union in which the same is situate, or the overseers of such first-mentioned parish, shall give ten days' notice to the clerk of the peace of the county in which such lunatic was found to appear for such county before two justices thereof, at a time and place to be appointed in such notice, it shall be lawful for such two justices, or any two or more justices of such county, upon the appearance of such clerk of the peace, or any one on his behalf, or, in case of his non-appearance, upon proof of his having been served with such notice, to inquire into the circumstances of the case, and to adjudge such pauper lunatic to be chargeable to such county (c), and to order (d) the treasurer of such county to pay to the guardians of any union or parish or the overseers of any parish all expenses incurred by or on behalf of such union or parish in or about the examination of such lunatic, and the bringing him before a justice or justices, and his conveyance to the asylum, hospital, or house, and all moneys paid by such guardians or overseers to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar

If settlement cannot be ascertained, a pauper lunatic may be made chargeable to the county.

amination of any lunatic pauper, present or future, of his removal to and from, and his maintenance in, any asylum, licensed house, or registered hospital, who would under any provision of this Act be chargeable to a parish in a union, shall from the 25th March, 1862, be borne by the common fund of the union comprising such parish."

(a) See *Reg. v. Newchurch*, ante, 640, note (b).

(b) This section applies to a person having no settlement in England. (*Somerset v. Shipham Overseers*, cited ante, 639, note (a)).

(c) By 25 & 26 Vict. c. 111, s. 45 (repealing the previous provisions of 18 & 19 Vict. c. 105, s. 14), provision is made as to the chargeability of lunatics whose settlements cannot be

ascertained when found in certain boroughs. See the section, *post*.

(d) An order under this section, obtained at the instance of a parish, by which a pauper lunatic has been sent to an asylum, and adjudging him to be chargeable to the county in which he is found, on the ground that he is not settled in that parish, and that his parish of settlement cannot be ascertained, is an *interim* and not a final order. The county, therefore, is not estopped, by submission to it, from afterwards obtaining orders of justices adjudging the pauper to be settled in the parish which obtained the first order, and requiring that parish to pay for his future maintenance. (*All Saints, Poplar, v. Middlesex*, 2 El. & El. 829.)

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months previous to the date of such order, and (if such lunatic is still in confinement) also to pay to the treasurer, officer, or proprietor of the asylum, hospital, or house the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and every such treasurer of a county on whom any such order is made shall, out of any moneys which may come into his hands by virtue of his office, immediately pay to such guardians or overseers the amount of the expenses and moneys by such order directed to be paid to them, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid: Provided always, that such justices may direct such inquiry to be made to ascertain the parish in which any pauper lunatic is settled as they think fit, and delay adjudging such pauper lunatic to be chargeable to any county until such further inquiry is made: provided also, that every county to which any pauper lunatic is adjudged to be chargeable as aforesaid may at any time thereafter inquire as to the parish in which such lunatic is settled, and may procure such lunatic to be adjudged to be settled in any parish.

Provision for the reimbursement to a county of moneys paid on account of a lunatic afterwards adjudged to belong to any parish.

Sect. 99. If, after any pauper lunatic has been sent to an asylum, registered hospital, or licensed house as aforesaid, and has been adjudged to be chargeable to a county, such county procure such lunatic to be adjudged to be settled in any parish, it shall be lawful for any two justices of the county or borough in which the asylum, registered hospital, or licensed house in which such lunatic is confined is situate, or from any part of which such lunatic was sent for confinement, or for any two justices being visitors of such asylum or licensed house, to make an order upon the guardians of the union to which such parish belongs, or of any such parish, if such parish be in a union or be under a board of guardians, or if not, then upon the overseers of such parish, for payment to the treasurer of the said county of all expenses and moneys paid by such treasurer as hereinbefore is provided, and of all moneys paid by such treasurer to the treasurer, officer, or proprietor of the asylum, hospital, or house, for the lodging, maintenance, medicine, clothing, and care of such lunatic, and incurred within twelve calendar months previous to such order, and (if such lunatic is still in confinement) also for payment to the treasurer or officer or proprietor of the asylum, hospital, or house of the reasonable charges of the future lodging, maintenance, medicine, clothing, and care of such lunatic; and such guardians or overseers shall immediately pay to the treasurer of such county the amount of the expenses and moneys by such order directed to be paid to him, and from time to time pay to the said treasurer, officer, or proprietor of the asylum, hospital, or house the future charges aforesaid.

Justices to make orders out of their respective jurisdictions.

Sect. 100. It shall be lawful for any justices hereinbefore authorized to make any such order as aforesaid upon the guardians of any union or parish, or upon the overseers of any parish, to make such order upon such guardians or overseers, although such union or parish be not within the jurisdiction of such justices.

Order for payment of charges of maintenance in asylums, etc., to extend to any asylum, etc., to which the lunatic may be removed.

Sect. 101. Where any order has been made for the payment of the future charges of the lodging, maintenance, medicine, clothing, and care of any lunatic in any asylum, registered hospital, or licensed house, such order shall extend to and be applicable in respect of the charges of the lodging, maintenance, medicine, clothing, and care of such lunatic in any asylum, registered hospital, or licensed house to which he may be removed under the powers of this or any other Act, in like manner as if such charges had by such order been directed to be paid to the treasurer or an officer or the proprietor of the asylum, registered hospital, or licensed house in which such lunatic may for the time being be confined.

The costs of pauper lunatics

Sect. 102. Provided always, that all the expenses incurred since the

twenty-ninth day of September, 1853, or hereafter to be incurred, in and about the examination, bringing before a justice or justices, removal, lodging, maintenance, medicine, clothing, and care of a pauper lunatic heretofore or hereafter removed to an asylum, registered hospital, or licensed house under the authority of this or any other Act, who would, at the time of his being conveyed to such asylum, hospital, or house, have been exempt from removal to the parish of his settlement or the country of his birth by reason of some provision in the Act of the session holden in the ninth and tenth years of her Majesty, chapter sixty-six, shall be paid by the guardians of the parish wherein such lunatic shall have acquired such exemption (*a*), if such parish be subject to a separate board of guardians, or by the overseers of such parish where the same is not subject to such separate board, and where such parish shall be com-

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who are irremovable to be borne by the parish wherein they were exempt from removal or by the common fund in unions.

(*a*) Where the wife of a man who had a settlement at T., but who was irremovable from L., where he resided, became insane while she was on a visit at W., and was sent by the relieving officer of W. to an asylum:—Held, that an order for the expenses of her conveyance to that asylum and her maintenance therein, might be made upon L. under this section. (*Leeds v. Wakefield*, 7 E. & B. 258; 26 L. J., M. C. 37.) With this case compare *Reg. v. St. Clement Danes*, cited note (*a*) to sect. 97, *ante*, 640.

This section applies to lunatic paupers removed to an asylum before the passing of this Act. Where, therefore, a lunatic pauper had been so removed, and an order made upon the parish of settlement for the payment of the expenses of his maintenance, etc., it was held by the Exchequer Chamber (reversing the judgment below) that the order was annulled by this statute, and that it was not necessary for the parish of residence to take any steps in order to get rid of its effect. (*Knowles v. Trafford*, 7 E. & B. 152; 26 L. J., M. C. 188.)

A boy, eighteen years of age, having resided unemancipated with his father for more than five years in A., a parish in the S. union, became insane, and was removed as a lunatic pauper to an asylum, the expense of his maintenance, etc., being paid by the S. union. After three years, the lunatic still being in the asylum, the father removed altogether from A., upon which an order of justices was made under sect. 97 of this Act, adjudging the lunatic to be settled in the parish of G. (the place of his father's settlement), and directing that parish to pay the costs of his maintenance, etc.:—Held, that the order was invalid, and that the costs of maintenance ought still to

be borne by the S. union under this section, for that, at the time of his being conveyed to the asylum, the lunatic was exempt from removal. (*Reg. v. St. Giles-in-the-Fields*, 30 L. J., M. C. 12.)

Before the passing of 9 & 10 Vict. c. 66, a pauper who had resided in A. for upwards of five years under such circumstances as to give the status of irremovability subsequently created, was taken to the workhouse of the union. When there, the expense of his relief was charged to M., another parish in the same union, by the consent of the guardians of M., under the erroneous belief that he was settled in M. In 1847, after the passing of the 7 & 8 Vict. c. 101, he was removed under an order signed by a justice, to a lunatic asylum, where he remained, at the charge of M., till 1854, when the charge was transferred to the common fund of the union, and again re-transferred to M. No order adjudicating the settlement in M. or elsewhere was ever obtained. The auditor charged the expense of the lunatic, as an irremovable pauper, under this section, to the common fund of the union:—Held, the decision was correct, notwithstanding the payment of the maintenance by M., and notwithstanding the 7 & 8 Vict. c. 101, s. 56, which enacts that, for the purpose of relief, settlement, and removal, the workhouse of any union is to be considered as situate in the parish to which each poor person therein is chargeable. (*Reg. v. West Ward Union*, 7 E. & B. 21; 26 L. J., M. C. 29.)

See further as to the construction of this section, in relation to sect. 97, *Reg. v. St. Mary, Ecteter*; *Reg. v. East Retford*; and *Reg. v. St. George, Bloomsbury*, cited note (*a*) to sect. 97, *ante*, 640.



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Sect. 5 of 12 &  
13 Vict. c. 103,  
repealed.

Guardians and  
overseers may  
pay charges  
without orders  
of justices.

Lunatic's pro-  
perty to be avail-  
able for his  
maintenance (c).

prised in any union (a) the same shall be paid by the guardians, and be charged to the common fund of such union (b) so long as the cost of the relief of paupers rendered irremovable by the last-mentioned Act shall continue to be chargeable upon the common funds of unions; and no order shall be made under any provision contained in this or any other Act upon the parish of the settlement in respect of any such lunatic pauper during the time that the above-mentioned charges are to be paid and charged as herein provided; and section five of the Act of the session holden in the twelfth and thirteenth years of her Majesty, chapter one hundred and three, shall be repealed.

Sect. 103. Provided also, that any guardians or overseers who would be liable under any provision contained in this Act to have an order made upon them for the payment of any money may pay the same without any such order being made, and may charge the same to such account as they could have done if such order had been made.

Sect. 104. If it appear to any justice or justices by this Act authorized to make any order for the payment of money for the maintenance of any lunatic that such lunatic has an estate, real or personal, applicable to his maintenance, and more than sufficient to maintain his family, if any, he or they shall, by an order under his or their hand and seal or hands and seals, direct the overseers of the parish, or a relieving officer of the parish or union, or the treasurer or some other officer of the county to which such lunatic is chargeable, or in which any property of the lunatic may be, or an officer of the asylum in which the lunatic may be, to seize so much of any money, and to seize and sell so much of the goods and chattels, and to take and receive so much of the rents and profits of the lands and tenements of such lunatic and other income of such lunatic as may be necessary to pay the charges of the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, accounting for the same to such justice or justices, such charges having been first proved to the satisfaction of such justice or justices, and the amount set forth in such order; and if any trustee or other person having the possession, custody, or charge of any property of such lunatic, or if the Governor and Company of the Bank of England, or any other body or person having in their or his hands any stock, interest, dividend, or annuity belonging or due to such lunatic, pay any money according to any such order, or pay any money without any such order, to the guardians of any union or parish, or to any overseer of any parish not in a union or under a board of guardians, or to the treasurer of any county, or any other officer of any county authorized to receive the same, to defray the charges paid or incurred by or on behalf of such parish, union, or county for the examination, bringing before a justice or justices, removal, lodging, maintenance, clothing, medicine, and care of such lunatic, the receipt of the person authorized to receive such money under such order, or of such guardians, overseer, or treasurer, or other officer, shall be a good

(a) This section applies to a Gilbert's union. See the judgment in *Leatham v. Bolton-le-Sands*, 35 L. J., M. C. 62.

(b) See 24 & 25 Vict. c. 55, s. 6, post, 668, making lunatics generally chargeable to the common fund.

(c) Where a person of unsound mind had been maintained in a lunatic asylum by his parish, a portion of the capital of a fund belonging to him which had been paid in under

the "Trustee Relief Act," was ordered to be applied in defraying the past charges of the parish. (*Re Buckley*, 1 Johns. 700.) *Quære* whether, under the above circumstances, justices have jurisdiction to order seizure of capital or only of income. (*Ib.*)

The Court has a discretion to order such repayment or not, as it may think most for the benefit of the lunatic. (*Ib.*)

discharge to such trustee, governor, and company, or other body or person as aforesaid.

Sect. 105. The liability of any relation or person to maintain any lunatic shall not be taken away or affected where such lunatic is sent to or confined in any asylum, registered hospital, or licensed house by any provision herein contained concerning the maintenance of such lunatic.

Sect. 106. If any person feel aggrieved by any refusal of an order of any justice or justices as aforesaid, such person may appeal to the next general or quarter sessions of the peace for the county or borough where the matter of appeal has arisen, the person so appealing having given to the justice or justices against whom such appeal is made fourteen clear days' notice of such appeal, and such sessions are hereby authorized and required to hear and determine the matter of such appeal in a summary way, and their determination shall be final and conclusive.

Sect. 107. The overseers of any parish, and the guardians of any union or parish, and the clerk of the peace of any county obtaining any order under this Act adjudging the settlement of any lunatic to be in any parish, shall, within a reasonable time after such order has been made, send or deliver, by post or otherwise, to the overseers or guardians of the parish in which such lunatic is adjudged to be settled, a copy or duplicate of such order, and also a statement in writing under their or his hands or hand, or where they are the guardians of a union or parish under the hands of any three or more of such guardians, stating the description and address of the overseers, guardians (*a*), or clerk of the peace obtaining such order, and the place of confinement of the lunatic, and setting forth the grounds of such adjudication, including the particulars of any settlement or settlements relied upon in support thereof; and on the hearing of any appeal against any such order, it shall not be lawful for the respondents to go into or give evidence of any other grounds in support of such order than those set forth in such statement (*b*).

Sect. 108. If the guardians of any union or parish, or the overseers (*c*) of any parish, feel aggrieved by any such order as aforesaid adjudging the settlement of any lunatic, they or he may appeal against the same to the next general quarter sessions of the peace for the county in behalf of which such order has been obtained, or in which the union or parish obtaining such order is situate, or in case such parish or union extend into several jurisdictions, then to the next general quarter sessions of the peace for the county or borough in which the asylum, registered hospital, or licensed house in which such lunatic is or has been confined is situate (*d*), and such sessions

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Liability of relations of pauper not to be affected.

Persons aggrieved by refusal of an order may appeal to the sessions.

Party obtaining order of adjudication to send copy thereof and statement of grounds to the parish or county affected.

Appeal against order of adjudication.

(*a*) Where the statement of the grounds of adjudication omitted to give the description and address of all the guardians by whom it was signed, it was held that the sessions had power to amend it. (*Reg. v. Manchester*, 26 *L. J.*, *M. C.* 1; 6 *E. & B.* 919.)

(*b*) Where an order of adjudication of the settlement of a pauper lunatic is obtained by the guardians of a union on behalf of a township, the proper persons to sign the statement of the grounds of adjudication and

particulars of settlement required by this section, are the overseers of the township. (*Reg. v. Heaton*, 28 *L. J.*, *M. C.* 181; 1 *El. & El.* 782.)

(*c*) See 24 & 25 *Vict. c. 55*, s. 7, *post*, 668. See also *Reg. v. West Riding of Yorkshire*, *post*, 646, note (*a*).

(*d*) Where an order adjudging the settlement of a pauper lunatic confined in an asylum was obtained by a union, consisting of parishes partly in a borough, which was wholly in one county but had separate quarter sessions, and partly of parishes in

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Copy of depositions to be furnished on application.

upon hearing the said appeal shall have full power finally to determine the matter (*u*).

Sect. 109. The clerk to the justices making any order adjudging the settlement of any lunatic, or the clerk of the peace in the case hereinafter provided for, shall keep the depositions upon which such order was made, and shall within seven days furnish a copy of such depositions to any party authorized to appeal against such order, if such party apply for such copy, and pay for the same at the rate of twopence for every folio of seventy-two words: Provided that no omission or delay in furnishing such copy of the depositions shall be deemed or construed to be any ground of appeal against the order: Provided also, that on the trial of any appeal against any such order, no such order shall be quashed or set aside either wholly or in part on the ground that such depositions do not furnish sufficient evidence to support, or that any matter therein contained or omitted raises an objection to the order, or grounds on which the same was made: Provided also, that if the justices who make any such order have not any clerk, they shall send or deliver the depositions to the clerk of the peace of the county or borough to the general quarter sessions whereof the appeal against such order is given by this Act, and the party obtaining such order shall, in such statement of grounds of adjudication as aforesaid, state that such justices have not any clerk.

No appeal if notice not given within a certain time after notice of order.

Sect. 110. No appeal shall be allowed against any such order if notice in writing of such appeal be not sent or delivered by post or otherwise to the party on whose application the order was obtained within the space of twenty-one days after the sending or delivery, as hereinbefore directed, of a copy or duplicate of such order and such statement as hereinbefore mentioned, unless within such period of twenty-one days a copy of the depositions shall have been applied for as aforesaid by the party intending to appeal, in which case a further period of fourteen days after the sending of such copy shall be allowed for the giving of such notice of appeal.

the county at large:—Held, that the appeal against the order, under this section, was to the quarter sessions of the county, and not to those of the borough in which the asylum was situate. (*Reg. v. The Justices of Kent, Law Rep. 1 Q. B. 385.*)

An order under sect. 97 of this Act, adjudging the settlement of a lunatic pauper confined in the borough lunatic asylum, was obtained by a parish situate wholly within a borough having separate quarter sessions, and was made by two justices of the borough, the asylum being within the borough:—Held, that the appeal, under this section, was to the county and not to the borough sessions. (*Reg. v. Warwickshire, 28 L. J., M. C. 249; 5 Jur. (N. S.) 1292.*)

(*a*) A Court of quarter sessions may adjourn appeals under this Act, the Act not limiting the hearing and determination to the sessions for which the appeal is entered or at which it is first gone into. (*Reg. v. Cambridge Union, 7 Jur. (N. S.) 1073;*

1 B. & S. 61.)

An order adjudging the settlement of a lunatic pauper to be in the township of H., and directing the guardians of the H. union to pay the costs of his examination, removal, and future maintenance, within which the township of H. was comprised, was directed to the overseers of the township of H., and to the guardians of the H. union, and was, under sect. 107, served upon the overseers of H., who gave notice of appeal. Notice of appeal against the same order was also given by the guardians of the H. union. At the next sessions the appeal by the guardians was entered and respited; and the appeal by the overseers was entered and proposed to be tried, but the sessions declined to hear it on the ground that the overseers had no right of appeal:—Held, that under this section a right of appeal is expressly given to the overseers, and a *mandamus* to hear the appeal was granted. (*Reg. v. West Riding of Yorkshire, 7 E. & B. 14; 26 L. J., M. C. 41.*)

Sect. 111. In every case where notice of appeal against such order is given, the appellant shall, with such notice, or fourteen days at least before the first day of the sessions at which such appeal is intended to be tried, send or deliver by post or otherwise to the respondent a statement in writing under their or his hands or hand, or where the appellants are the guardians of any union or parish, under the hands of any three or more of such guardians, of the grounds of such appeal (a); and it shall not be lawful for the appellant on the hearing of any appeal to go into or give evidence of any other grounds of appeal than those set forth in such statement.

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Grounds of appeal to be stated.

Sect. 112. Upon the hearing of any appeal against any such order no objection whatever on account of any defect in the form of setting forth any ground of adjudication or appeal in any such statement shall be allowed, and no objection to the reception of legal evidence offered in support of any such ground alleged to be set forth in any such statement shall prevail unless the Court be of opinion that such alleged ground is so imperfectly or incorrectly set forth as to be insufficient to enable the party receiving the same to inquire into the subject of such statement, and to prepare for trial: Provided always, that in all cases where the Court is of opinion that any such objection to such statement or to the reception of evidence ought to prevail, it shall be lawful for such Court, if it so think fit, to cause any such statement to be forthwith amended by some officer of the Court, or otherwise, on such terms as to payment of costs to the other party, or postponing the trial to another day in the same sessions, or to the next subsequent sessions, or both payment of costs and postponement, as to such Court appears just and reasonable (b).

As to the sufficiency of statement of grounds of adjudication or appeal.

Power to amend statement.

Sect. 113. If, upon the trial of any appeal against any such order or upon the return to a writ of certiorari, any objection be made on account of any omission or mistake in the drawing up of such order, and it be shown to the satisfaction of the Court that sufficient grounds were in proof before the justices making such order to have authorized the drawing up thereof free from the said omission or mistake, it shall be lawful for the Court, upon such terms as to payment of costs as it think fit, to amend such order and to give judgment as if no such omission or mistake had existed: Provided always, that no objection on account of any omission or mistake in any such order brought up upon a return to a writ of certiorari shall be allowed, unless such omission or mistake have been specified in the rule for issuing such writ of certiorari (c).

Power for Court to amend order on account of omission or mistake.

Proviso.

(a) By a local Act sixty-three persons annually elected have the management of the poor of Norwich, and form a corporation by the name of the "Governor, deputy governor, and guardians of the poor of the city and county of Norwich, and liberties of the same," and are authorized to do and perform all acts as churchwardens and overseers of the poor:—Held that this section applied to such a union as that constituted under the local Act, and that grounds of appeal signed "J. W., governor of the corporation of the governor, deputy-governor, and guardians of the poor of the city and county of Norwich, and the liberties of the same," were insufficiently signed. (*Reg. v. Cambridgeshire*, 8 Jur. (N. S.) 562.)

(b) See *Reg. v. Manchester*, ante, 645, note (a) to sect. 107.

(c) By a local Act, the churchwardens and overseers of the parish, with the rector and twenty-one persons to be elected under the Act, were constituted a select vestry, and were to be deemed to be a board of guardians for the relief and management of the poor of the parish. An order under sect. 97 of this Act adjudging the settlement and maintenance of a lunatic pauper was directed to and served on the "churchwardens and overseers." On appeal, the quarter sessions amended the order by substituting the direction "to the guardians of the poor of the parish of L." Held, that the order was bad as being misdirected. (*Reg.*

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Party making frivolous or vexatious statement of grounds liable to pay costs.

Party losing appeal to pay such costs as Court may direct.

Decisions of Courts upon hearing appeals to be final.

Abandonment of orders.

Sect. 114. If either of the parties to the said appeal shall have included in the statement of grounds of adjudication or of appeal sent to the opposite party any ground or grounds in support of the order or of appeal which, in the opinion of the Court determining the appeal, is or are frivolous and vexatious, such party shall be liable, at the discretion of the said Court, to pay the whole or any part of the costs incurred by the other party in disputing any such ground or grounds.

Sect. 115. Upon every such appeal the Court before whom the same is brought shall and may, if they think fit, order and direct the party against which the same is decided to pay to the other such costs and charges as may to such Court appear just and reasonable, and shall certify the amount thereof (a).

Sect. 116. The decision of the Court upon the hearing of any appeal against any such order, as well upon the sufficiency and effect of the statement of the grounds in support of the order and appeal, and of the copy or duplicate of the order sent to the appellant parish or county, as upon the amending or refusing to amend the order as aforesaid, or the statement of grounds, shall be final (b), and shall not be liable to be reviewed in any Court by means of a writ of certiorari or mandamus or otherwise.

Sect. 117. In any case in which an order has been made as aforesaid, and a copy or duplicate thereof sent as herein required, it shall and may be lawful for the party who has obtained such order, whether any notice of appeal against such order has or has not been given, and whether any appeal has or has not been entered, to abandon such order, by notice in writing under the hand or hands of such party, or, where such order has been obtained by the guardians of any union, under the hands of any three or more of such guardians, to be sent by post or delivered to the appellant or the party entitled to appeal, and thereupon the said order and all proceedings consequent thereon shall become and be null and void to all intents and purposes as if the same had not been made, and shall not be in any way given in evidence, in case any other order for the same purposes shall be obtained: Provided always, that in all cases of such abandonment the party so abandoning shall pay to the appellant or the party entitled to appeal the costs which he has incurred by reason of such order and of all subsequent proceedings thereon; which costs the proper officer of the Court before whom any such appeal (if it had not been abandoned) might have been brought shall, upon application, tax and ascertain at any time, whether the Court be sitting or not, upon production to him of such notice of abandonment, and upon proof to him that such reasonable notice of taxation, together with a copy of the bill of costs, has been given to the overseers, guardians, or clerk of the peace abandoning such order, as the distance between the parties shall in his judgment require; and thereupon the sum allowed for costs, including the usual costs of taxation, which such officer is hereby empowered to charge and receive, shall be indorsed upon the said notice of abandon-

*v. Liverpool (Parish)* 29 L. J., M. C. 137, and 2 El. & El. 687.) Held also that the sessions had no power to make such amendment. To do so, would be to make a new order upon new and absent parties. (*Ibid.*)

(a) Where, on appeal against an order, the quarter sessions confirmed the order subject to a special case, and the appellants afterwards abandoned their intention of stating the case, it was held that an order of a

subsequent sessions granting the costs of the appeal was bad. The sessions at which an appeal is heard alone has jurisdiction to grant costs. (*Reg. v. Staffordshire*, 7 E. & B. 935; 26 L. J. (N.S.), M. C. 179.)

(b) Where the quarter sessions make an amendment which they have no legal power to make, the order for such amendment is not final under this section. (*Reg. v. Liverpool*, 2 El. & El. 687; 29 L. J., M. C. 137.)

ment, and the said notice so indorsed shall be filed among the records of the said Court.

Sect. 118. The provisions of this Act for and concerning the payment of expenses incurred or to be incurred in relation to pauper lunatics shall be applicable with respect to persons confined as pauper lunatics sent to any asylum, registered hospital, or licensed house under any other Act authorizing their reception therein as pauper lunatics, and (save as herein otherwise provided concerning any lunatic who shall appear to have an estate, real or personal, applicable to his maintenance) with respect to all other lunatics sent to any asylum, registered hospital, or licensed house under any order of a justice or justices made under this Act, or the Acts hereby repealed, or any of them, as if such last-mentioned lunatics were at the time of being so sent actually chargeable to the parish from which they have been or shall be sent.

Sect. 119. In every case of an inquiry, investigation, dispute, or appeal as to the parish in which a pauper lunatic is settled, the guardians, clerks of the guardians, relieving officers, and overseers of every union including any parish, or of any parish, which parish respectively is interested in such inquiry, investigation, dispute, or appeal, and every person duly authorized by them respectively, and the clerk of the peace of any county interested in such inquiry, investigation, dispute, or appeal, and every person duly authorized by such clerk of the peace, shall at all reasonable times be allowed free access, in the presence of the medical attendant, to the lunatic, to examine him as to the premises.

Sect. 120. On the death, discharge, or removal of any pauper from any asylum, registered hospital, or licensed house, the necessary expenses attending the burial, discharge, or removal of such pauper shall be borne by the union or parish (if any) to which such pauper is chargeable, as hereinbefore provided, or if such pauper be chargeable to a county as hereinbefore provided, then by such county, and shall be paid by the guardians of such union or parish, or by the overseers of such parish if not in a union or under a board of guardians, or by the treasurer of such county.

Sect. 121. If any overseer, or any treasurer of any county, upon whom any order of justices for the payment of money under the provisions of this Act or of any Act hereby repealed is made, shall refuse or neglect for the space of twenty days next after due notice of such order to pay the money so ordered to be paid, the said money, together with the expenses of recovering the same, shall be recovered by distress and sale of the goods of the overseer or treasurer so refusing or neglecting, by warrant under the hands and seals of any two justices hereby authorized to make the order for payment of the money aforesaid, or by an action at law, or by any other proceeding in any Court of competent jurisdiction, against such overseer or treasurer; and if the guardians upon whom any such order is made refuse or neglect for such time as aforesaid to pay the money so ordered to be paid, the same, together with the expenses of recovering the same, may be recovered by an action at law or by any other proceeding in any such Court; and in case of any such action or proceeding no objection shall be taken to any default or want of form in any order of admission or maintenance, or in any certificate or adjudication under this Act, if such order or adjudication shall not have been appealed against, or if appealed against shall have been affirmed.

#### Miscellaneous.

Sect. 122. Any physician, surgeon, or apothecary who shall sign any certificate contrary to any of the provisions herein contained shall for every such offence forfeit any sum not exceeding twenty pounds; and

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Provisions of this Act as to expenses to extend to pauper lunatics sent to asylums under any other Act, etc.

In cases of inquiries and appeals guardians and officers interested to have access to the lunatic.

Expenses of the burial, removal, or discharge of a pauper.

Money ordered to be paid by any clerk, overseer, relieving officer, or treasurer to be levied (in case of neglect to pay) by distress or action.

Medical men signing false certificates, and persons not being

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medical men  
giving certi-  
ficates as such,  
guilty of misde-  
meanour.

Penalty on offi-  
cers or servants  
ill-treating luna-  
tics.

Penalty on offi-  
cers, etc., allow-  
ing lunatics to  
escape or be  
at large without  
permission.

Visitors may sue  
and be sued in the  
name of their  
clerk, whose re-  
moval shall not  
abate action.

Secretary of  
commissioners in  
lunacy and clerks  
to visitors may  
prosecute for  
offences.

Penalties to be  
recovered in  
manner provided  
by 11 & 12 Vict.  
c. 43.

Application of  
penalties.

any physician, surgeon, or apothecary who shall falsely state or certify anything in any certificate under this Act, and any person who shall sign any certificate under this Act, in which he shall be described as a physician, surgeon, or apothecary, not being a physician, surgeon, or apothecary respectively within the meaning of this Act, shall be guilty of a misdemeanour.

Sect. 123. If any superintendent, officer, nurse, attendant, servant, or other person employed in any asylum strike, wound, illtreat, or wilfully neglect any lunatic confined therein, he shall be guilty of a misdemeanour, and shall be subject to indictment for every such offence, or to forfeit for every such offence, on a summary conviction thereof before two justices, any sum not exceeding twenty pounds nor less than two pounds.

Sect. 124. If any superintendent, officer, or servant in any asylum shall, through wilful neglect or connivance, permit any patient in any case to quit or escape from such asylum, or be at large without such order as in this Act mentioned (save in the case of temporary absence authorized under the regulations of the committee of visitors), or shall secrete or abet or connive at the escape of any such person, he shall for every such offence forfeit and pay any sum not more than twenty pounds nor less than two pounds.

Sect. 125. Every committee of visitors may sue and be sued in the name of their clerk; and no action brought or commenced by or against any such committee of visitors in the name of their clerk shall abate or be discontinued by the death or removal of such clerk, but the clerk for the time being to the visitors shall always be deemed plaintiff or defendant in such action, as the case may be (a).

Sect. 126. It shall be lawful for the secretary of the commissioners in lunacy, by their order, to prosecute or proceed against any person for any offence against this Act, and for the clerk to any committee of visitors of any asylum, by their order, to prosecute or proceed against any person for any offence against this Act committed by any officer or servant belonging thereto or employed therein; and such secretary or clerk acting as the prosecutor or complainant in any such prosecution or proceeding shall be competent to be a witness therein, in the same manner as if he were not such prosecutor or complainant; and no such prosecution or proceeding shall abate or be discontinued by reason of the death or removal of such secretary or clerk, but his successor shall come and be in his place.

Sect. 127. All penalties and forfeitures imposed by this Act shall and may be recovered summarily before two justices in manner provided by the Act of the twelfth year of her Majesty, "to facilitate the Performance of the Duties of Justices of the Peace out of Sessions, within England and Wales, with respect to summary Convictions and Orders;" and such penalties and forfeitures, when recovered upon proceedings taken by the secretary of the commissioners, shall be paid to such secretary, and be applied and accounted for by him in like manner as money received for licences for the reception of lunatics granted by the said commissioners, and when recovered upon proceedings taken by the clerk to any committee of visitors of any asylum shall be paid to the treasurer of such asylum, to be by him applied for the purposes of such asylum in such manner as such committee may think fit and direct, and in all other cases shall be paid to the treasurer of the county or borough for which the justices by whom the person convicted of such offence have acted in such conviction.

(a) See *Moffat v. Dickson*, and *Kendall v. King*, cited *ante*, 612.

Sect. 128. Any person who thinks himself aggrieved by any order or determination of any justices under this Act, other than orders adjudicating as to the settlement of any lunatic pauper, and providing for his maintenance, may, within four calendar months after such order or determination made or given, appeal to the general or quarter sessions, the person appealing having first given at least fourteen clear days' notice in writing of such appeal and the nature and matter thereof to the person appealed against, and forthwith after such notice entering into a recognizance before some justice of the peace, with two sufficient sureties, conditioned to try such appeal, and to abide the order and award of the said court thereupon; and the said general or quarter sessions, upon proof of such notice and recognizance having been given and entered into, shall in a summary way hear and determine such appeal, or, if they think proper, adjourn the hearing thereof until the next general or quarter sessions, and if they see cause may reduce any penalty or forfeiture to not less than one-fourth of the amount imposed by this Act, and may order any money to be returned which shall have been levied in pursuance of such order or determination, and may also award such further satisfaction to be made to the party injured, or such costs to either of the parties, as they shall judge reasonable and proper; and all such determinations of the said general or quarter sessions shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever.

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Power of appeal to the quarter sessions.

Sect. 129. The council of every borough which shall within six months after the passing of this Act, by writing under their common seal, give notice to one of her Majesty's principal secretaries of state of the intention of such council to take upon itself the duties, powers, and authorities herein-before imposed or conferred upon or given to the justices of the borough, shall from and after the giving of such notice be subject to and have and exercise all the duties, powers and authorities of and for erecting and providing asylums and carrying into execution the purposes of this Act which by this Act are imposed or conferred upon or given to the justices of such borough, or upon any committee of visitors to be appointed as directed by this Act, and all liabilities and contracts incurred or entered into by such justices or committee on behalf of such borough under this Act, or any Act hereby repealed, shall thereupon become transferred to and obligatory upon such council to the same extent as they would have been binding or obligatory on such justices or committee, and all matters and things which in this Act are required to be done at any general or quarter sessions, or at any meeting of the justices of such borough, may and shall thenceforth be done at any meeting of the council of such borough, and all notices which by this Act are required to be given to or by the clerk of the peace shall and may thenceforth be given to or by the town clerk of such borough.

Council of every borough to exercise the same duties, etc. of erecting asylums as are conferred upon justices, etc.

Sect. 130. It shall and may be lawful for the council of any such borough to confer upon any committee to be appointed by such council such of the powers and authorities which by this Act are conferred upon any committee of visitors to be appointed thereunder, as to such council shall seem fit.

Committee appointed by council to have same powers as committee of visitors.

Sect. 131. Every city, town, liberty, parish, place, or district, not being a borough or part of a borough within the meaning of this Act, shall for all the purposes of this Act be annexed to and be treated and rated as part of the county within which the same is situate, or if such city, town, liberty, parish, place, or district be situate partly in one county and partly in another, then to and as part of such one of the same counties as such city, town, liberty, parish, place, or district may have been annexed to under the said Act of the eighth and ninth years of her Majesty, hereby repealed, or if not already so annexed, then to and as part of such one of the same counties as one of her Majesty's principal secretaries of

Every city, town, liberty, etc., not being a borough within the meaning of this Act, to be annexed to and rated as part of the county within which the same is situate.



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Lunatic  
Asylums, etc.*

state shall by writing under his hand and seal direct, and shall contribute rateably to the expenses of the asylum of the county to which it is or shall be so annexed, whether such asylum have been provided before or after the passing of this Act, and shall for the purposes of this Act be within the jurisdiction of the justices of such county; and in every case in which any such city, town, liberty, parish, place, or district as aforesaid is or shall be annexed to a county in which an asylum has been or shall have been already erected or provided, and such city, town, liberty, parish, place, or district shall not have contributed as provided by law towards the expenses incurred in erecting or providing such asylum, the present or any future committee of visitors of such asylum shall, as soon as conveniently may be after the passing of this Act, or after such annexation, fix a sum to be paid by the city, town, liberty, parish, place, or district so annexed towards the expenses then already incurred in erecting or providing such asylum, in due proportion to the population of such city, town, liberty, parish, place or district, and of the county to which it shall be annexed, according to the last returns under the authority of Parliament, and the same shall be paid by every such city, town, liberty, parish, place, or district to the treasurer of such asylum, and shall be levied and raised by such city, town, liberty, parish, place, or district by a rate to be made therein in the same manner as any rate to be made therein for the purpose of levying or raising any other moneys hereby directed to be levied and raised for the purposes of this Act; and the justices for the county to which such city, town, liberty, parish, place, or district is or shall be annexed as aforesaid in general or quarter sessions, are hereby authorized and required to make such rate as aforesaid; and the sum so paid by such city, town, liberty, parish, place, or district shall be applied by the treasurer of the asylum to whom the same shall have been paid in such manner as the committee of visitors shall direct, according to the provisions and for carrying into execution the purposes of this Act.

*Interpretation of  
terms.*

Sect. 132. In this Act the words and expressions following shall have the several meanings hereby assigned to them, unless there be something in the subject or context repugnant to such construction; (that is to say,)

“County” (a) shall mean every county, riding, and division of a county. county of a city, county of a town, and shall include every city, town, parish, place, or district by this Act annexed to a county for the purposes hereof:

“Borough” shall mean every borough town and city corporate having a quarter sessions, recorder, and clerk of the peace:

“Parish” shall mean any parish, township, vill, tithing, extra-parochial place, or place maintaining its own poor:

“Union” shall mean a union of parishes formed under the Act of the fifth year of King William the Fourth, intituled “An Act for the Amendment and better Administration of the Laws relating to the Relief of the Poor in England and Wales,” or under the Act of the twenty-second year of King George the Third, (b) intituled “An Act for the better Relief and Employment of the Poor,” or incorporated or united for the relief or maintenance of the poor under any local Act:

(a) The 25 & 26 Vict. c. 111, s. 48, *post*, enacted that so much of this section as enacts that the word county shall mean a county of a city or county of a town, should, except with respect to the city of London, be repealed. The 28 & 29 Vict. c. 80, *post*, provides (sect. 1) that the

word “county,” in this Act, and the Acts construed therewith, shall be construed to include every county of a city or county of a town having quarter sessions and a clerk of the peace and no recorder.

(b) See *Leatham v. Bolton le Sands*, 35 L. J., M. C. 62.

- "Lunatic" shall mean and include every person of unsound mind, and every person being an idiot;
- "Pauper" shall mean every person maintained wholly or in part by or chargeable to any parish, union, or county:
- "Justice" shall mean justice of the peace:
- "Officiating Clergyman of the Parish" shall include the chaplain of the workhouse of the same parish, or of the workhouse of a union to which such parish belongs:
- "Guardians" shall mean guardians, governors, directors, managers, or acting guardians, entitled to act in the ordering of relief to the poor from poor rates:
- "Overseer" shall mean overseer of the poor of any parish, or any person acting as such:
- "Relieving Officer" and "Clerk of the Guardians" shall respectively mean such relieving officer and clerk of the guardians, and any persons acting as such respectively:
- "Clerk of the Peace" shall mean every clerk of the peace, and every person acting as such, or any deputy duly appointed:
- "Physician," "Surgeon," and "Apothecary" (*a*) shall respectively mean a physician, surgeon, and apothecary duly authorized or licensed to practice as such by or as a member of some college, university, company, or institution legally established, and qualified to grant such authority or licence, in some part of the United Kingdom, or having been in practice as an apothecary in England or Wales on or before the fifteenth day of August one thousand eight hundred and fifteen, and being in actual practice as a physician, surgeon, or apothecary:
- "Treasurer of the borough" shall mean every officer who has the custody of any moneys raised by a borough rate:
- "Treasurer of the county" shall mean every officer who has the custody of any county rate, or of any rate of any city, town, parish, place, or district by this Act annexed to a county for the purposes hereof:
- "County rate" shall mean a county rate and any funds assessed upon or raised in or belonging to any county in the nature of county rates, and applicable to the purposes to which county rates are applicable:
- "Borough rate" shall mean a borough fund or rate, and any fund assessed upon or raised in or belonging to any borough in the nature of borough rates, and applicable to the purposes to which borough rates are applicable;
- "Asylum" shall mean any asylum, house, building, or place already erected or provided under the provisions of an Act passed in the forty-eighth year of King George the Third, chapter ninety-six, or an Act of the ninth year of King George the Fourth, chapter forty, or the said Acts hereby repealed, or any of them, or subject to the provisions of the said Acts or any of them, or to be erected or provided under the provisions of this Act.

2. *County and Public Lunatic Asylums, etc.*

48 Geo. 3, c. 96;  
9 Geo. 4, c. 40.

Sect. 133. Nothing in this Act shall affect the provisions of any of the following Acts; (that is to say), an Act of the session holden in the thirty-ninth and fortieth years of King George the Third, chapter ninety-four: an Act of the session holden in the first and second years of her Majesty, chapter fourteen; and an Act of the session holden in the third and fourth years of her Majesty, chapter fifty-four; or any other provisions relating to criminal lunatics.

Nothing to affect provisions of 39 & 40 Geo. 3, c. 94; 1 & 2 Vict. c. 14, or 3 & 4 Vict. c. 54, as to criminal lunatics.

(*a*) The 25 & 26 Vict. c. 111, s. 47, *post*, provides that "Physician, Surgeon, or Apothecary," wherever

used in this Act, "shall mean a person registered under 'The Medical Act'" (21 & 22 Vict. c. 90.)

*Schedules.*Commencement  
of Act.Extent of Act.  
Short Title.

Sect. 134. This Act shall commence and come into operation on the first day of November one thousand eight hundred and fifty-three.

Sect. 135. This Act shall extend only to England and Wales.

Sect. 136. This Act may be cited as "The Lunatic Asylums Act, 1853."

## SCHEDULES referred to by the foregoing Act.

## SCHEDULE (A.) (a).

*Form of Agreement for uniting under the foregoing Act for the Purpose of erecting or providing an asylum for the Reception of Lunatics.*

*It is agreed this                      day of                      by and between the committees of justices of the peace for the county [or counties] and the borough [or boroughs] of                      and the committee of the subscribers of the lunatic hospital of                      [as the case may be] severally appointed to treat for the uniting of the said county and borough [or counties and boroughs] [and                      Lunatic hospital, as the case may be] for the purposes of an Act passed in the                      year of her Majesty Queen Victoria, intituled "An Act" [here insert the title of this Act], that the said county [or counties] and borough [or boroughs, and the said lunatic hospital, as the case may be], shall henceforth be united for the purposes of the said Act; and that an asylum for the reception of lunatics with all necessary buildings, courts, yards, and outlets, shall be immediately provided and properly fitted up and accommodated for the purposes mentioned in the said Act; and that the necessary expenses attending the providing, building, fitting up, repairs, and maintenance of the said asylum shall be defrayed by the said county [or counties] and borough [or boroughs and lunatic hospital], so united, in the following proportions (that is to say),—*

*The county of                      five-ninths of the said expenses.*

*The borough of                      two-ninths of the same.*

*The lunatic hospital of                      two-ninths of the same [as the case may be].*

*And it is further agreed, that the committee of visitors to superintend the building, erection, and management of the said asylum shall be appointed in the following proportions; and the justices of the peace for the said county of                      shall appoint (b)                      , the justices of the peace for the borough of                      shall appoint (b)                      , and the subscribers to the said lunatic hospital of                      shall appoint (b)                      , and the proportions in which the said committee of visitors are to be appointed as aforesaid may be from time to time varied, with the consent in writing under the hands of the greater number of visitors of the said county and borough [or each of the said counties and boroughs] and of the greater number of the visitors appointed by the said body of subscribers, and with the consent of the commissioners in lunacy: And hereunto we, the undersigned, being the major part of each of the committees of justices of the peace for the said county and borough [or counties and boroughs] respectively, and the major part of the committee of subscribers to the said lunatic hospital, do, on behalf of the said county and borough [or counties and boroughs] and lunatic hospital, set our hands and seals (c), this                      day of                      in the year                      .*

## SCHEDULE (B.)

*Form of Mortgage and Charge upon the County or Borough Rates for securing the Money borrowed.*

*We,                      the chairman of the Court of quarter sessions of the peace of the county of                      holden at                      the                      day of                      and*

(a) In agreements made since the passing of the 18 & 19 Vict. c. 105 (see sect. 3, *post*, 664), this form must be varied so as to provide for contribution of expenses.

(b) Insert in these blanks either the number or the proportion of visitors; and where the number of the committee of visitors is not fixed in

the agreement, but only the proportions, a provision shall be made by the agreement for fixing from time to time the number of such committee.

(c) See 18 & 19 Vict. c. 105, s. 15 *post*, 667, dispensing with sealing, and rendering valid orders and instruments which had theretofore been duly signed but not sealed.

two other of her Majesty's justices of the peace for the said county, assembled in the said Court [or we, the mayor and council of the borough of \_\_\_\_\_ as the case shall be], in pursuance of the powers to us given by an Act passed in the year of her Majesty Queen Victoria, intituled "*An Act*" [here insert the title of this Act], do hereby mortgage and charge all the rates and funds to be raised and paid within the said county [or borough, as the case may be], under the description of county rates [or borough fund or rates], with the payment of the sum of \_\_\_\_\_ which \_\_\_\_\_ of \_\_\_\_\_, hath advanced and paid towards defraying the expenses of purchasing lands, and for building and repairing, etc. [as the case shall be] a lunatic asylum for the said county [or borough, or the united counties and boroughs of, etc., as the case may be], and we do hereby grant and confirm the same rates and funds unto the said \_\_\_\_\_ his executors, administrators, and assigns, for securing the repayment of the said sum of \_\_\_\_\_ and interest for the same after the rate of \_\_\_\_\_ per centum per annum, and do order the treasurer for such county [or borough, etc., as the case shall be], to pay the interest of the said sum of \_\_\_\_\_ half-yearly, as the same shall become due, until the principal shall be discharged, at the times and in the manner agreed upon between the said \_\_\_\_\_ and the said justices [or the said mayor and council, as the case may be], pursuant to the directions of the said Act.

**SCHEDULE (C.) No. 1.**

*Names of the pauper lunatics in the asylum at \_\_\_\_\_ for the county [or borough, etc., as the case may be], of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.*

Names of those chargeable to a Parish.	Date of Admission.	Names of those chargeable to County.	Date of Admission.	Names of Criminals.

*This is a correct return.*

*(Signed)*

*Clerk of the Asylum.*

**SCHEDULE (C.) No. 2.**

*Names of all private lunatics in the asylum at \_\_\_\_\_ for the county [or borough, etc., as the case may be], of \_\_\_\_\_ on the \_\_\_\_\_ day of \_\_\_\_\_ 18 \_\_\_\_.*

Names.	Date of Admission.

*This is a correct list.*

*(Signed)*

*Dated*

*Clerk of the Asylum.*

## SCHEDULE D.

*Form of Annual Return.*

*A true list of all lunatics, idiots, and other persons of unsound mind, chargeable to the common fund, or to the parishes comprised within [such part of] the union [as is situate] [or to the parish of] in the county of specifying the names, sex, and age of each, and whether dangerous or otherwise, and for what length of time they have been supposed to be of unsound mind, and where detained or how otherwise disposed of (a).*

Name.	Age.	Sex.	Parish to which chargeable.	Where maintained.				Weekly cost of maintenance and clothing.	Whether lunatic or idiot.	Dangerous to himself or others.	Of dirty habits.	For what length of time supposed to be of unsound mind.	Observations.
				In a county or borough asylum, and what asylum, and when sent thither.	In a registered hospital or licensed house, and where, and when sent thither.	In the work-house.	In lodgings, or boarded out, and where, and with whom, by name.						

*Signed by me this                      day of                      , 18                      .*

*A. B.,*

*Clerk to the board of guardians of the said union,  
[or overseer of the said parish.]*

## SCHEDULE E. (b).

*County of  
Union [or parish] of  
District of*

*Quarterly list of lunatic paupers within the                      district of the union of  
[or the parish of                      ] in the county or borough of  
not in any asylum, registered hospital, or licensed house.*

(a) Lunatics chargeable to the common fund, who are in the workhouse, should be entered as in the county where the workhouse is situate; and those who are not in the workhouse, as in the county in which

they reside.

(b) This schedule is repealed (by 25 & 26 Vict. c. 111, s. 21), and the list must now be made in the form in the schedule B. to the 25 & 26 Vict. c. 111, which see *post*.

Name.	Sex.	Age.	Form of mental disorder.	Duration of present attack of insanity, and, if idiotic, whether or not from birth.	Where and with whom resident.	Date of Visit.	In what condition, and if ever restrained, why, by what means, and how often.

*I declare that I have personally examined the several persons whose names are specified in this list, on the days set opposite to their names, and that they are all [or all except A. B., C. D., and E. F.] properly taken care of, and may properly remain out of an asylum, and that these are the only pauper lunatics, to the best of my knowledge, in the district of the union [or in the parish] of who are not in an asylum, registered hospital, or duly licensed house.*

(Signed) A. B., Medical officer of the district  
of the union [or parish] of

Dated the day of one thousand eight hundred and

#### SCHEDULE (F.) No. 1.

##### Order for the Reception of a Pauper Patient.

*I, C. D. [in the case of a single justice of the peace, or in the case of two justices, or of a clergyman and relieving officer, etc., we, C. D. and E. F.], the undersigned, having called to my [or our] assistance a physician [or surgeon, or apothecary, as the case may be], and having personally examined A. B., a pauper [omit the words "a pauper" when the lunatic is not a pauper], and being satisfied that the said A. B. is a lunatic [or an idiot, or a person of unsound mind], [add, where the lunatic is sent as being wandering at large, the words "wandering at large," and in the case of a lunatic sent by virtue of the authority given to two justices, add "not under proper care and control," or "and is cruelly treated [or neglected] by the person having the care or charge of him," as may appear to the justices to be the case], and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. as a patient into your asylum [or hospital, or house]. Subjoined is a statement respecting the said A. B.*

(Signed) C. D.

(a) A justice of the peace for the city or borough  
of [or an or the officiating  
clergyman of the parish of].

(Signed) E. F.

The relieving officer of the union or parish  
of [or an overseer of the  
parish of].

Dated the day of , one thousand eight hundred

2. County  
and Public  
Lunatic  
Asylums, etc.

To                      superintendent of the asylum for the  
county of                      , or the lunatic hospital of  
   , or proprietor of the licensed  
house of                      [describing the asylum,  
hospital, or house].

*Schedules.*

NOTE.—Where the order directs the lunatic to be received into any asylum other than an asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, or into a registered hospital or licensed house, it should state that the justice or justices or other persons making the order is or are satisfied that there is no asylum of such county or borough, or that the asylum or asylums thereof is or are full; or (as the case may require) the special circumstances by reason whereof the lunatic cannot conveniently be taken to an asylum for such first-mentioned county or borough.

*Statement (a).*

[If any particulars in this Statement be not known, the fact to be so stated.]

Name of patient, and Christian name, at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

The religious persuasion, as far as known.

Previous place of abode.

Whether first attack.

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others.

Parish or union to which the lunatic is chargeable (if a pauper or destitute lunatic).

Name and Christian name and place of abode of the nearest known relative of the patient, and degree of relationship (if known).

*I certify that to the best of my knowledge the above particulars are correctly stated.*

*(Signed)*

[In the case of a pauper, to be signed by the relieving officer or overseer.]

SCHEDULE (F.) No. 2 (b).

*Order for the Reception of a Private Patient.*

*I, the undersigned, hereby request you to receive A. B., a lunatic [or an idiot, or a person of unsound mind], as a patient into your asylum. Subjoined is a statement respecting the said A. B.*

*(Signed)*

Name.

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstance of connection with the patient.

(a) Wherever possible, the name and address of one or more relations of the lunatic must now be inserted in the order, 25 & 26 Vict. c. 111, s. 25, *post*, 673.

(b) See sect. 74, *ante*, 632, and note (a) thereon as to the subsequent provisions of 25 & 26 Vict. c. 111, in respect to orders for the reception of private patients.

*Dated this*                      *day of*                      *one thousand eight hundred*      2. *County*  
*and*                      ,                      *superintendent of the asylum for the county [or borough]*      *and Public*  
*To*                      , *superintendent of the asylum for the county [or borough]*      *Lunatic*  
*of*                      [describing the asylum].      *Asylums, etc.*

---

*Schedules.*

*Statement.*

[If any of the particulars in this Statement be not known, the fact to be so stated.]

Name of patient, with Christian name, at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

The religious persuasion, as far as known.

Previous place of abode.

Whether first attack.

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others.

Whether found lunatic by inquisition, and date of commission or order for inquisition.

Special circumstances (if any) preventing the patient being examined, before admission, separately by two medical practitioners.

(Signed)

*Name.*

Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added; viz.,—

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstances of connection with the patient.

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SCHEDULE (F.) No. 3.

*Form of Medical Certificate (a).*

*I, the undersigned* [here set forth the qualification entitling the person certifying to practise as a physician, surgeon, or apothecary, *ex. gr.*, "*being a Fellow of the Royal College of Physicians in London*"] *and being in actual practice as a* [physician, surgeon, or apothecary, as the case may be], *hereby certify, that I, on the*                      *day of*                      , *at*                      [here insert the street and number of the house (if any) or other like particulars], *in the county of*                      [in any case where more than one medical certificate is required by this Act, here insert separately from any other medical practitioner] *personally examined* A. B. *of*                      [insert residence and profession or occupation, if any], *and that the said* A. B. *is a* [lunatic, or an idiot, or a person of unsound mind], *and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds; viz.,—*

---

(a) See provisions as to defective certificates, 25 & 26 Vict. c. 111, s. 27, *post*, 674.



2. County  
and Public  
Lunatic  
Asylums, etc.

1. Facts indicating insanity observed by myself [here state the facts].
2. Other facts (if any) indicating insanity communicated to me by others [here state the information, and from whom].

(Signed)

Place of abode.

Schedules.

Dated this  
and

day of

, one thousand eight hundred

## SCHEDULE (F.) No. 4.

## Notice of Admission.

I hereby give you notice, that A. B. was admitted into this asylum as a private [or pauper] patient on the day of , and I hereby transmit a copy of the order and statement and medical certificates [or certificate] on which he was received.

[If a private patient be received upon one certificate only, the special circumstances which have prevented the patient from being examined by two medical practitioners to be here stated, as in the statement accompanying the order for admission.]

Subjoined is a statement with respect to the mental and bodily condition of the above-named patient.

(Signed)

Clerk of

Asylum.

Dated the  
and

day of

, one thousand eight hundred

## Statement.

I have this day [some day not less than two clear days after the admission of the patient] seen and examined , the patient mentioned in the above notice, and hereby certify that with respect to mental state he [or she] , and that with respect to bodily health and condition he [or she]

(Signed)

Medical officer of

Asylum.

Dated the  
and

day of

, one thousand eight hundred

## SCHEDULE (F.) No. 5.

## Form of Notice of Discharge, Removal, or Death (a).

I hereby give you notice, that pauper [or a private] patient admitted into this asylum on the day of was discharged therefrom recovered [or relieved, or not improved], or was removed to [mentioning the asylum, etc.] relieved [or not improved], by the authority of , or died therein in the presence of , on the day of .

(Signed)

Clerk of the

Asylum.

Dated the

day of

One thousand eight hundred and

In case of death, add, "I certify that the apparent cause of death of the said [as ascertained by post-mortem examination (if so),] was"

(Signed)

Medical Officer of the

Asylum.

(a) In case of death, notice of such death must be sent by post, in a pre-paid letter, to the relation (or one of

the relations) of the patient named in the order for his or her reception, 25 & 26 Vict. c. 111, s. 25, post, 673.

SCHEDULE (G.) No. 1.

REGISTRY OF ADMISSIONS.

Register of Patients.\*

Admission, if any.	No. in order of Ad- mission.	Date of Admission.	Christian and Surname at Length.	Sex.	Age.	Condition as to Marriage.			Condition of Life, and previous Occupation.	Previous Place of Abode.	County, Union, or Parish to which chargeable.	By whose authority sent.	Dates of Medical Certificates, and by whom signed.	Form of Mental Disorder.	Supposed Cause of Insanity.	Bodily Condition, and name of Dis- ease, if any.	Epileptics.	Congenital Idiots.	Duration of existing Attacks.			Number of previous Attacks.	Age on First Attack	Date of Discharge, Removal, or Death.	Discharged or removed.			Died.	Observations.
						Married.	Single.	Widowed.											Years.	Months.	Weeks.				Recovered.	Relieved.	Not improved.		
1	1846 : Jan. 3	William Johnson	1	23	1	1	1	1	Carpenter	1	1	1	1	Melancholia	1	1	1	1	4	1	1	2	17	1846 : Sept. 1	1	1	1		
2																													
3																													
4	1848 : June 9	William Johnson	1	25	1	1	1	1	1	1	1	1	1	1	1	1	1	1	7	1	1	3	1	1848 : Dec. 2	1	1	1		
5																													
6																													
7	1852 : May 6	William Johnson	1	29	1	1	1	1	1	1	1	1	1	1	1	1	1	1	3	1	1	4	1	1853 : June 8					
8																													

\* In the case of an asylum receiving both private and pauper patients, a separate register in the above form to be kept for each class.

2. County and Public Lunatic Asylums, etc. Schedules.

2. County  
and Public  
Lunatic  
Asylums, etc.  
Schedules.

SCHEDULE (G.) No. 2.  
*Register of Discharges, Removals, and Deaths (a).*

Date of Death, Discharge, or Removal.	Date of last Admission.	No. in Register of Patients.	Christian and Surname at length.	Sex.		Discharged.						Removal, and to what asylum, re- gistered hospital, or licensed house.				Died.		Assigned cause of Death.	Age at Death.		Observations.			
						Re- covered.			Re- lieved.			Not im- proved.			Re- lieved.							Not im- proved.		
						M.	F.		M.	F.		M.	F.		M.							F.		M.
1846: Sept. 1 . .	1846: Jan. 3 . .	1	William Johnson	1	—																			
1848: Dec. 2 . .	1848: June 9 . .	4	William Johnson	1	—	1																		
1853: June 8 . .	1852: May 6 . .	7	William Johnson	1	—												Phthisis.		27					

(a) In the case of an asylum receiving both private and pauper patients, a separate register in the above form to be kept for each class.

## SCHEDULE (G.) No. 3.

## Form of Medical Journal (a).

2.. County  
and Public  
Lunatic  
Asylums, etc.

Date.	Number of patients.		Patients who are, or since the last entry have been, under restraint or in seclusion, when and for what period, and reasons, and, in case of restraint, by what means.		Patients under medical treatment, and for what, if any, bodily disorder.		Deaths, injuries, and violence to patients since the last entry.
	M.	F.	Males.	Females.	Males.	Females.	

The 18 & 19 Vict. c. 105, intituled, "An Act to amend the Lunatic Asylums Act, 1853, and the Acts passed in the Ninth (b) and Seventeenth Years (c) of Her Majesty, for the Regulation of the Care and Treatment of Lunatics" (14th August, 1855), enacts as follows :—

18 & 19 Vict.  
c. 105.

Section 1. Section three of the "Lunatic Asylums Act, 1853" (d), shall extend to empower the justices of any one county or borough to authorize any committee of justices elected for such county or borough thereunder to treat and enter into an agreement for uniting with the subscribers to any such hospital as therein mentioned, and it shall not be necessary that any other county or borough be a party to such agreement; and section five of the said Act (e) shall extend to empower any such committee of visitors as therein mentioned to enter into an agreement for uniting with the subscribers to any such hospital alone.

Any single county or borough may unite with the subscribers to a hospital, and any committee of visitors of an existing asylum may so unite.

Section 2. When two or more committees agree to unite under the "Lunatic Asylums Act, 1853," or under that Act as amended by this Act, the proportion in which the expenses of carrying into execution the purposes of the said Act shall be charged upon and raised by each county and borough so uniting may be calculated and fixed according to the extent of the accommodation which in the judgment of the committees entering into such agreement will be required for the pauper lunatics of such county and borough respectively; and the power in section sixteen (f) of the "Lunatic Asylums Act, 1853," of repealing or altering the stipulations of any agreement for uniting, shall extend to authorize the alteration thereof by readjusting the proportions in which the expenses aforesaid shall be charged on each county and brought and the subscribers (if any) uniting, or any of the said parties, and, where the

The proportion of expenses between any county and borough may be fixed with reference to accommodation likely to be required.

(a) In the case of an asylum receiving both pauper and private patients, a separate journal is to be kept in the above form for each class.

(c) 16 & 17 Vict. c. 96, *post*.

(d) See *ante*, 602.

(e) See *ante*, 603.

(f) See *ante*, 607.

(b) 8 & 9 Vict. c. 100, *post*, 678.

2. *County and Public Lunatic Asylums, etc.*

Agreements for uniting to be hereafter entered into to stipulate for contribution by counties and boroughs according to their respective populations, where not fixed according to foregoing provision.

Where agreement for uniting already entered into, expenses are to be contributed in proportion to their respective populations, save where fixed under the foregoing provision.

Where there is a dissolution of a union a new asylum to be provided.

Provisions to apply to councils of boroughs where they have taken upon themselves the execution of the "Lunatic Asylums Act, 1853" (c).

committee of visitors think fit, by fixing as aforesaid, according to the probable extent of accommodation required, the proportion in which each county and borough is to contribute to such expenses; and where the proportions of any contributions are fixed according to the probable extent of accommodation required as aforesaid, the agreement shall specify that such proportions are fixed according to that basis.

Sect. 3. Where an agreement for uniting is hereafter entered into under the "Lunatic Asylums Act, 1853," or under that Act as amended by this Act, and the proportion in which the expenses of carrying the purposes of the said Act into execution are to be charged upon each county and borough is not fixed, under the foregoing provision, with reference to the probable extent of accommodation required, the agreement shall stipulate that such expenses, or, where any committee of subscribers of a lunatic hospital are a party to the agreement, then that the aggregate amount to be contributed by the counties and boroughs towards such expenses, shall be from time to time charged upon and raised by the counties and boroughs in proportion to their respective populations as stated in the last return for the time being made of the same under the authority of Parliament, and such agreement shall be varied from the form in schedule (A.) (a) to the "Lunatic Asylums Act, 1853," accordingly.

Sect. 4. Where an agreement for uniting has been already entered into under the "Lunatic Asylums Act, 1853," or any former Act, the expenses of carrying into execution any such Act, or, where any committee of subscribers is a party to the agreement, the aggregate amount to be contributed by such counties and boroughs, shall be from time to time charged upon and raised by the counties and boroughs united in proportion to their respective populations as stated in the last return for the time being made of the same under the authority of Parliament, save where such expenses are adjusted and fixed under the foregoing provision according to the probable extent of accommodation required.

Sect. 5. To the intent that due provision may be made for the reception and care of the pauper lunatics of counties and boroughs parties to unions upon the dissolutions of such unions (b), the justices of every county and borough united (either alone or with any subscribers) shall, before any dissolution of their union takes effect, at a general or quarter sessions for such county, or at a special meeting of the justices of such borough (as the case may require), elect a committee to provide an asylum for their county or borough, and authorize such committee to proceed for that purpose in manner by the "Lunatic Asylums Act, 1853," provided in the case of a county or borough not having an asylum; and all the provisions of the said Act and this Act applicable to a committee elected to provide an asylum in the case of a county or borough not having an asylum shall be applicable to the committee elected under this provision.

Sect. 6. Where the council of a borough has taken upon itself, under the "Lunatic Asylums Act, 1853," or the Act of the session holden in the eighth and ninth years of her Majesty, chapter one hundred and twenty-six (d), the duties, powers, and authorities imposed or conferred upon or given to the justices of the borough, such council shall be subject to and have and exercise the duties, powers, and authorities by this Act imposed or conferred upon the justices of a borough or any committee elected by them; and such council may confer upon any com-

(a) See *ante*, 654.

(b) As to mode of dissolution, see 16 & 17 Vict. c. 97, s. 39, *ante*, 615.

(c) As to the mode in which councils of boroughs may take upon them-

selves the powers of the "Lunatic Asylums Act, 1853," see 16 & 17 Vict. c. 97, s. 8, *ante*, 604.

(d) Repealed by 16 & 17 Vict. c. 97, s. 1, *ante*, 601.

mittee appointed by them such of the said duties, powers, and authorities as under this Act are or may be conferred upon a committee elected by the justices of a borough; and where the council of a borough had before the commencement of the "Lunatic Asylums Act, 1853," taken upon itself under the said Act of the eighth and ninth years of her Majesty, chapter one hundred and twenty-six (*a*), the duties, powers, and authorities imposed or conferred upon or given to the justices of the borough, such council shall, from the commencement of the "Lunatic Asylums Act, 1853," be deemed to have been subject to and to have had the duties, powers, and authorities by that Act imposed or conferred upon the justices of a borough, or any committee elected by them, and to have been authorized to confer upon any committee appointed by such council such of the said duties, powers, and authorities as under such Act may be conferred upon a committee elected by the justices of a borough.

2. *County and Public Lunatic Asylums, etc.*

Sect. 7. Any place which has become a borough within the definition contained in section one hundred and thirty-two of the "Lunatic Asylums Act, 1853" (*b*), since the commencement of that Act, shall, from and after the passing of this Act, be deemed to be a borough annexed to the county in which the same is situate, and any place which after the passing of this Act becomes a borough within such definition shall, from and after the time of becoming such borough, be deemed a borough so annexed, and the provisions contained in section nine in the "Lunatic Asylums Act, 1853" (*c*), for the appointment of two justices of a borough annexed thereunder to a county to be members of the committee of visitors of the asylum of such county, and in relation to the contribution by such borough to the expenses of the asylum of such county, shall extend to any borough annexed under this enactment.

Places becoming boroughs after the commencement of the "Lunatic Asylums Act, 1853," to be deemed to be boroughs annexed to the counties in which they are situate.

Sect. 8. The power given by section seventy-seven of the "Lunatic Asylums Act, 1853" (*d*), to any two of the visitors of any asylum, being justices, to order any pauper lunatic chargeable to any parish or union within the county or borough, or any county or borough to which such asylum wholly or in part belongs, or to any such county, and who may be confined in any other asylum, or in any registered hospital or licensed house, to be removed to such first-mentioned asylum, shall be extended so as to authorize such visitors to order any pauper lunatic chargeable to any parish or union within any county or borough, or to any county for the reception of the pauper lunatics whereof into such first-mentioned asylum there is a subsisting contract, and who may be confined as aforesaid, to be removed to such first-mentioned asylum, and also to order any such pauper lunatic as hereinbefore mentioned to be removed from such first-mentioned asylum to any asylum, registered hospital, or licensed house, subject nevertheless to the restriction contained in section seventy-eight of the "Lunatic Asylums Act, 1853" (*e*).

Powers given by sect. 77 of "Lunatic Asylums Act, 1853," to visitors of an asylum to order removal of pauper lunatics extended.

Sect. 9. The powers of the commissioners and visitors under the "Lunatic Asylums Act, 1853," and the Acts of the eighth and ninth years of her Majesty, chapter one hundred, and the sixteenth and seventeenth years of her Majesty, chapter ninety-six, with reference to any licensed house and the inmates thereof, and all powers and provisions of the said Acts having reference to the discharge, removal, and transfer of such inmates, shall, after the expiration or revocation of any licence granted in respect of such house, continue in force for all purposes, so long as any lunatics are detained therein, in the same manner as if the licence subsisted.

Powers of commissioners and visitors to continue applicable to a house which has been licensed after expiration of licence, while any patients are therein.

Sect. 10. Whereas doubts have been entertained whether under the

Contracts under forty-second sec.

(*a*) Repealed by 16 & 17 Vict. c. 97,  
§. 1, *ante*, 601.  
(*b*) See *ante*, 652.

(*c*) See *ante*, 604.  
(*d*) See *ante*, 633.  
(*e*) See *ante*, 634.

2. *County and Public Lunatic Asylums, etc.*

tion of "Lunatic Asylums Act, 1853," may be renewed.

Provision for burial of pauper lunatics (b).

Power to enter into agreements with cemetery company or burial board (b).

Committee of visitors may convey land for burial ground for lunatics, etc., dying in the asylum (c).

forty-second section of the "Lunatic Asylums Act, 1853" (a), a contract for the reception of pauper lunatics thereby authorized can be renewed: be it declared and enacted, that upon or after the expiration or other determination of any contract for any of the purposes of the said section it shall be lawful for every committee of visitors, under and subject to the several provisions of the said Act applicable thereto, from time to time to enter into a new contract for any of the purposes mentioned in the said section with the committee of visitors of any asylum, or with the subscribers to any hospital registered or the proprietor of any house licensed for the reception of lunatics, and for the committee of visitors of any asylum, or the subscribers to any registered hospital or the proprietor of any licensed house, to contract with any committee of visitors accordingly.

Sect. 11. Where the visitors of lunatic asylums for counties and boroughs in England, or any of their officers duly authorized in that behalf, shall undertake the burial of any pauper lunatic, and the burial cannot take place in the parish where the death shall have taken place by reason of the public burial ground of such parish having been closed, and no other having been provided, or where, in consequence of the crowded state of such burial ground, the visitors as aforesaid are of opinion that the burial of such dead body therein would be improper, it shall be lawful to bury such body in a public burial ground of or in some other parish as near as conveniently may be to the parish wherein the death shall have taken place, with the consent of the minister and churchwardens of such parish: Provided, that in all cases of burial under the direction of the visitors or their officers as aforesaid the fee or fees payable by the custom of the place where the burial may be, or under the provisions of any Act of Parliament, shall be paid by the said visitors for the burial of each such body to the person or persons who by such custom or under such Act of Parliament shall be entitled to receive such fee or fees.

Sect. 12. The visitors of lunatic asylums in England may from time to time enter into agreements with the proprietors of any cemetery established under the authority of Parliament, or with any burial board duly constituted under the statutes in that behalf, for the burial of the dead bodies of any pauper lunatics which such visitors may undertake to bury; and thereupon the burial of any such body, under the directions of the said visitors or their officer, in such cemetery, or in the burial ground of such burial board, shall be lawful: Provided, however that no such agreement shall be valid unless made in such form and with such stipulations as the commissioners in lunacy shall approve.

Sect. 13. And whereas it is expedient that burial grounds should be provided for persons dying in any county or borough lunatic asylum built or to be built under the authority of any Act of Parliament for the reception of pauper lunatics; be it therefore enacted, that it shall be lawful for every committee of visitors of any county or borough lunatic asylum, or for any trustees or trustee in whom any land shall be vested for the purposes of an asylum, with the previous consent of one of her Majesty's principal secretaries of state under his hand, to give, grant, and convey to her Majesty's commissioners for building new churches, and it shall be lawful for them to accept, any portion not exceeding two statute acres of any land which belongs to or has been or may be purchased for any such asylum, for the purpose of consecration as a burial ground for pauper or other lunatics or officers or servants dying in such

(a) See *ante*, 617.

(b) See further provisions as to the burial of lunatics dying in the

asylum, 25 & 26 Vict. c. 111, s. 9, *post*, 671.

(c) See further provisions, 25 & 26 Vict. c. 111, s. 9, *post*, 671.

asylum, and that in all such cases the freehold of every burial ground, of which her Majesty's said commissioners shall accept a conveyance under the provisions of this Act for the purpose of consecration, shall, after the same burial ground shall have been consecrated, vest in the visitors or trustees or trustee, as the case may be, for the time being of the county or borough lunatic asylum to which such burial ground shall belong, and be for ever thereafter exclusively appropriated for the burial of pauper and other lunatics dying in such asylum, and of the officers and servants belonging to such asylum and dying therein; and that from and after the consecration of such land the incumbent of the parish in which such burial ground is situate shall not be entitled to any fee for the interment therein of any pauper or other lunatic dying in such asylum, or of any of the officers and servants belonging to such asylum and dying therein.

Sect. 14 (a). And whereas doubts are entertained as to the chargeability of pauper lunatics found in boroughs whose settlements cannot be ascertained, and it is expedient to remove such doubts:

Section three of the Act of the session holden in the twelfth and thirteenth years of her Majesty, chapter eighty-two, shall be repealed; and where any pauper lunatic is not settled in the parish by which or at the instance of some officer or officiating clergyman of which he is sent to an asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, and such lunatic was found in a borough having a separate court of quarter sessions of the peace, and which is not liable, under the Act of the session holden in the fifth and sixth years of King William the Fourth, chapter seventy-six, section one hundred and seventeen, to the payment of a proportion of the sums expended out of the county rate, such lunatic may be adjudged to be chargeable to such borough by any two justices of such borough; and it shall not be lawful for any justices to adjudge such lunatic to be chargeable to any county, nor to make any order upon the treasurer of any county for the payment of any expenses whatsoever incurred or to be incurred in respect of the said lunatic; and all the provisions in the "Lunatic Asylums Act, 1853," as to the mode of determining that a pauper lunatic is chargeable to a county, and as to the order to be made for the maintenance of such pauper lunatic, shall extend and be applied to such borough, as fully and effectually, to all intents and purposes, as if all the said provisions were repeated and re-enacted in this Act, and made applicable to such borough, in the same manner in all respects as though for the purposes of this provision such borough were a separate and distinct county.

Sect. 15. In all cases in which, under the "Lunatic Asylums Act, 1853," or the Act of the session holden in the eighth and ninth years of her Majesty, chapter one hundred, or the Act of the session holden in the sixteenth and seventeenth years of her Majesty, chapter ninety-six, any order or other instrument is required to be under the hand and seal or hands and seals of any visitor or visitors, justice or justices, it shall be sufficient for such order or instrument to be signed only; and all such orders and instruments as aforesaid which have been signed before the passing of this Act, and have not had a seal or seals affixed to them, as by law required, shall be and be deemed to have been valid and sufficient to justify any proceeding thereon or thereunder.

For the remaining enactments of this statute (sections 16-19), see *post* (tit. "*Private Asylums*"), p. 678.

2. *County and Public Lunatic Asylums, etc.*

Pauper lunatics, whose settlements cannot be ascertained where found in a borough which does not contribute to the county expenditure, to be chargeable to such borough.

Seals of commissioners, visitors, and justices, to orders, etc., dispensed with.

(a) This section is now repealed by 25 & 26 Vict. c. 111, s. 45, *post*, 675. As to its construction, while in

force, see *Reg. v. Bacchus*, 2 El. & El. 181; 29 L. J., M. C. 181.



2. *County and Public Lunatic Asylums, etc.*

19 & 20 Vict. c. 87.

Recorders of boroughs annexed to counties to appoint two justices to be members of committee for providing an asylum.

24 & 25 Vict. c. 55, ss. 6, 7.

The 19 & 20 Vict. c. 87, intituled "An Act to amend the 'Lunatic Asylums Act, 1853'" [July 29, 1856], enacts as follows:

Sect. 1. Where a committee is or shall hereafter be appointed to provide an asylum for any county under the "Lunatic Asylums Act, 1853," the recorder of every borough now or hereafter annexed to such county for the purposes of the said Act, shall, at the general or quarter sessions next after such appointment as aforesaid, or where such committee has been already appointed, shall, at the general or quarter sessions next after the passing of this Act, appoint two justices of such borough to be members of such committee.

The 24 & 25 Vict. c. 55, intituled "An Act to amend the Laws regarding the Removal of the Poor and the Contribution of Parishes to the Common Fund in Unions" [1st Aug. 1861] (a), enacts (*inter alia*) as follows:—

Sect. 6. The cost of the examination of any lunatic pauper, present or future, of his removal to and from, and his maintenance in, any asylum, licensed house, or registered hospital, who would, under any provision of the 16 & 17 Vict. c. 97, be chargeable to a parish in a union, shall, from and after the 25th March next, be borne by the common fund of the union comprising such parish.

Sect. 7. The guardians of any union may obtain orders upon the guardians of any other union, or upon the guardians or overseers of any parish not comprised in a union, or upon the treasurer of the county, and may appeal against or defend any orders in respect of any lunatic paupers hereby made chargeable upon the common fund of the union, in like manner and subject to the same incidents and provisions as are contained in the said last-cited Act in respect of lunatic paupers chargeable to any parish in such union: Provided that every appeal now pending may be continued and determined as though this Act had not been passed.

The 25 & 26 Vict. c. 111, intituled "An Act to amend the Law relating to Lunatics" [7th Aug. 1862], after reciting that it is expedient to amend the law relating to lunatics, other than those found lunatics by inquisition, or lunatics convicted of crime, or acquitted on the ground of insanity, enacts as follows:

*Preliminary.*

Sect. 1. In the construction and for the purposes of this Act (if not inconsistent with the context or subject matter) the following terms shall have the respective meanings hereinafter assigned to them; that is to say,—

"Lunacy Act, chapter one hundred," shall mean an Act passed in the session holden in the eighth and ninth years of the reign of her

(a) Where an order, under 16 & 17 Vict. c. 97, s. 97 (*ante*, 639), was made on the 24th March, 1862, adjudging the settlement of a lunatic pauper to be in a parish in a union, and ordering the guardians of the union to pay for and on account of the parish the costs of examination, conveyance, and future maintenance of such lunatic, it was held that (whatever might be the effect of this section with regard to the apportion-

ment of past and future costs) the order being made before the coming into operation of the Act, was good in form. (*Droitwich Union v. Worcester Union*, 32 L. J. (N. S.), M. C. 196; 9 Jur. (N. S.) 1151.)

(b) As to the powers of guardians to obtain orders and to appeal against orders in respect to lunatics so made chargeable on the common fund, see sect. 7, *post*, 670.

Orders in lunacy may be obtained by or appealed against by boards of guardians.

Interpretation of terms.

Lunatics to be chargeable on the common fund (b).

present Majesty, chapter one hundred, and intituled "An Act for the Regulation of the Care and treatment of Lunatics:"

"Lunacy Act, chapter ninety-six," shall mean an Act passed in the session holden in the sixteenth and seventeenth years of the reign of her present Majesty, chapter ninety-six, intituled "An Act to amend an Act passed in the ninth year of her Majesty, for the Regulation of the Care and Treatment of Lunatics":

"Lunacy Act, chapter ninety-seven," shall mean an Act passed in the session holden in the sixteenth and seventeenth years of the reign of her present Majesty, chapter ninety-seven, intituled "An Act to consolidate and amend the Laws for the Provision and Regulation of Lunatic Asylums for Counties and Boroughs, and for the Maintenance and Care of Pauper Lunatics, in England";

"The Lunacy Acts" shall include the three Acts above mentioned and this Act:

"Asylum" shall have the same meaning as it has in the "Lunacy Act," chapter ninety-seven:

"Registered hospital" shall mean any hospital registered for the reception of lunatics.

Sect. 2. This Act shall be construed as one Act with the Lunacy Acts, chapters one hundred, ninety-six, and ninety-seven, and words defined by the said Acts or any of them shall have the same meaning in this Act.

Construction of Act.

Sect. 3. This Act may be cited for all purposes as the "Lunacy Acts Amendment Act, 1862."

Short title

#### *Establishment of County Asylums.*

Sect. 4. Whereas by section thirty-one (a) of the "Lunacy Act," chapter ninety-seven, it is provided, "that the said visitors shall from time to time make their report to the general or quarter sessions of the county or borough, counties or boroughs, for which they (or such of them as have not been elected by subscribers, as therein mentioned) have been elected, of the several plans, estimates, and contracts which have been agreed upon, and of the sum or sums of money necessary to be raised and levied for defraying the purchase moneys and expenses thereof on the county or borough, or, in the case of such union as therein mentioned, on each or every of the counties or boroughs; which plans, estimates, and contracts shall be subject to the approbation of the Court or Courts of general or quarter sessions of such county or counties, and of the justices of such borough or boroughs, before the same are completed or carried into execution" (save in the case therein mentioned):

Plans, etc., of visitors, when not approved by the quarter sessions to be submitted to secretary of state.

Where a plan, estimate, or contract agreed upon by any committee of visitors on behalf of a union of counties, or of a union of counties and boroughs, is disapproved of by one or more but not all of the Courts of general or quarter sessions, or other bodies of justices whose approbation is required, in pursuance of the said enactment, each Court of general or quarter sessions or body of justices disapproving of the same shall, within four months after such plan, estimate, or contract is reported to them, or where the same has been reported to them before the passing of this Act, then within one month after the holding of the first Court of general or quarter sessions of the county or the first meeting of the justices of the borough after the passing of this Act, as the case may be, set forth their objections, with any observations they may think fit in relation thereto, in a report in writing, and forthwith transmit the same

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to one of her Majesty's principal secretaries of state, and the secretary of state shall cause such inquiries to be made in relation to the matter as he may deem proper, and shall by writing under his hand direct the plan, estimate, or contract in question, with or without any alteration therein, or such other plan, estimate, or contract for the like purpose as he may think fit, to be proceeded with and carried into execution.

The decision of the secretary of state, given in pursuance of this section, shall be final, and shall be acted upon without further report or approval.

Estimates to accompany plans.

Sect. 5. Together with every plan for building, or providing or enlarging or improving, any asylum for pauper lunatics, which is to be submitted to the commissioners in lunacy, under section forty-five(a) of the said "Lunacy Act," chapter ninety-seven, an estimate of the cost and expense of carrying such plan into execution shall be also submitted to the said commissioners.

Excess of payment may be paid to a building and repair fund.

Sect. 6. Where the committee of visitors enter into any agreement for the reception into the county asylum of pauper lunatics belonging to a county or borough which has not contributed to the erecting or providing such asylum, and think fit under the "Lunacy Act," chapter ninety-seven, section fifty-four (b), to fix a greater weekly sum than is charged by them in respect of lunatics sent from or settled in some place, parish, or borough which has contributed to the building or providing such asylum, they may, if they think fit, pay over the excess created by the payment of such greater weekly sum to a building and repair fund, to be applied by them to the altering, repairing, or improving such asylum, and shall annually submit to the general or quarter sessions a detailed statement of the manner in which such fund has been expended.

Provision as to contract for reception of lunatics.

Sect. 7. Where any contract has been made by a committee of visitors of any county or borough under the "Lunacy Act," chapter ninety-seven, section forty-two (c), for the reception into any asylum, hospital, or licensed house of the whole or a portion of the pauper lunatics of such county or borough, it shall be lawful for the justices of such county or borough, so long as such contract is subsisting, to defray out of the county or borough rate so much of the weekly charge agreed upon for each pauper lunatic received therein as may, in the opinion of such committee of visitors, represent the sum due for the use of such asylum, hospital, or licensed house, not exceeding, however, one fourth of the whole of such weekly charge, in exoneration to that extent of the union to which the maintenance of any such pauper lunatic may be chargeable.

Provision for care of chronic lunatics.

Sect. 8. It shall be lawful for the visitors of any asylum and the guardians of any parish or union within the district for which the asylum has been provided, if they shall see fit, to make arrangements, subject to the approval of the commissioners and the president of the poor law board, for the reception and care of a limited number of chronic lunatics (d) in the workhouse of the parish or union, to be selected by the superintendent of the asylum, and certified by him to be fit and proper so to be removed (e).

(a) See *ante*, 619.

(b) See *ante*, 622.

(c) See *ante*, 617.

(d) By the 26 & 27 Vict. c. 110, s. 2 (*post*, 676), the expression "chronic lunatics" in this section is declared to include chronic lunatics chargeable to other parishes or unions,

as well as chronic lunatics chargeable to the parish or union into the workhouse of which they are proposed to be received.

(e) See further as to lunatic patients in workhouses, sect. 37 of this Act, *post*, 645.

Sect. 9. The committee of visitors of any asylum may provide accommodation for the burial of pauper lunatics dying in the asylum by acquiring a new burial ground, or by enlarging any existing burial ground; they may purchase for the purposes aforesaid any land, and may grant any land when purchased, or any land already belonging to them, to any person or body of persons, to be held on trust for a new burial ground or as part of an existing burial ground, or they may themselves hold such land on trust as a new burial ground or as part of an existing burial ground; they may also contribute any sums of money to any person or body of persons on condition of such person or body of persons agreeing to provide accommodation for the burial of such paupers as aforesaid in any burial ground; they may also take steps for the consecration of any new burial ground or enlarged burial ground, or any part thereof, and in the case of a new burial ground they may provide for the appointment of a chaplain therein; they may enter into any agreements necessary for carrying into effect the powers conferred by this section, but the exercise of such powers shall be subject to the restrictions following:

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Barial of lunatics dying in asylum (a).

Firstly, that not more than two statute acres shall in the case of any one asylum be purchased or granted as a new burial ground, or for an enlargement of an existing burial ground:

Secondly, that the sanction of the Court of general or quarter sessions and of one of her Majesty's principal secretaries of state shall be given to any plan that may be proposed by any visitors for carrying into effect this section.

All expenses incurred by any visitors in providing accommodation for the burial of pauper lunatics, in pursuance of this Act, shall be deemed to be moneys, costs, and expenses payable for the purposes of the "Lunacy Act," chapter ninety-seven, and may be defrayed accordingly.

Sect. 10. All the provisions of the "Lands Clauses Act, 1845," except the provisions of that Act "with respect to the purchase and taking of any lands otherwise than by agreement," "with respect to the recovery of forfeitures, penalties, and costs," "with respect to lands acquired by the promoters of the undertaking, under the provisions of the "Lands Clauses Consolidation Act, 1845," or the special Act, or any Act incorporated therewith, but which shall not be required for the purposes thereof," "and with respect to the provision to be made for affording access to the special Act by all parties interested," shall be incorporated with this Act; and for the purposes of this Act the expression "the promoters of the undertaking," wherever used in the said "Lands Clauses Consolidation Act," shall mean any such committee of visitors as aforesaid.

8 & 9 Vict. c. 18, incorporated.

Sect. 11. It shall be lawful for any committee of visitors, with the sanction of the Court of general or quarter sessions, to hire or take on lease, from year to year or for any term of years, at such rent, and upon such terms, and under such covenants as they think fit, any land or buildings, either for the employment or occupation of the patients in the asylum, or for the temporary accommodation of any pauper lunatics for whom the accommodation in the asylum may be inadequate.

Taking on lease additional lands for use of asylum.

The restrictions in section thirty-three of the "Lunacy Act," chapter ninety-seven (b), as to the term for which the committee of visitors are thereby authorized to take a lease, or to rent land, shall not apply to land or buildings to be hired or taken under this provision.

The land and buildings so to be hired or taken shall, while used for the purposes of this section, be deemed part of the asylum, and all exist-

(a) See also 18 & 19 Vict. c. 105, ss. 11, 12, *ante*, 666.

(b) See *ante*, 613.

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and Public  
Lunatic  
Asylums, etc.*

Superannuation  
of officers in  
asylum.

ing provisions as to the asylum or part of the asylum shall be applicable thereto accordingly.

Sect. 12. The power vested in the visitors of an asylum of granting an annuity of way of superannuation to any person that has been an officer or servant in such asylum for not less than twenty years, under section fifty-seven of the "Lunacy Act," chapter ninety-seven (*a*), may be exercised by them when any such person has been an officer or servant for not less than fifteen years, in the same manner as if the time of such service had been twenty years; and in calculating the amount of superannuation regard may be had, if the visitors think fit, to the value of the lodgings, rations, or other allowances enjoyed by the person superannuated: Provided, that no annuity by way of superannuation granted by the visitors of any asylum under the provisions of this Act, or of the "Lunacy Act," chapter ninety-seven, shall be chargeable on or payable out of the rates of any county until such annuity shall have been confirmed by a resolution of the justices of such county in general or quarter sessions assembled.

Provision for  
superannuation  
of matrons.

Sect. 13. Where the offices of superintendent and matron of any asylum are held by man and wife, and an order has been made under the "Lunacy Act," chapter ninety-seven, granting an annuity by way of superannuation to the superintendent, it shall be lawful for the committee of visitors of such asylum, if they think fit to do so, and if the matron has been an officer in the asylum for not less than twenty years, to grant to her such annuity by way of superannuation as they in their discretion think proportionate to her merits and time of service, although she may not have become incapable of executing her office from sickness, age, or infirmity; and every annuity granted in pursuance of this section shall be payable out of the rates lawfully applicable to the building or repairing of such asylum: Provided, firstly, that the annual amount by way of superannuation paid to any matron under this section shall not exceed two-thirds of the salary payable at the time of her retirement; secondly, that no such superannuation shall be granted unless notice of the meeting at which the same is to be granted, and of the intention to determine thereat the question of such superannuation, have been given in such manner and so long before the time appointed for such meeting as is provided in the said Act with respect to notices of meetings of committees of visitors, nor unless three visitors concur in and sign the order granting the same; thirdly, if any such matron as aforesaid at any time thereafter is appointed to any public office, or to any office under the "Lunacy Act," in respect of which she receives a salary, the payment of the compensation awarded to her under this Act shall be suspended so long as she receives such salary, if the amount thereof is greater than the amount of compensation, or, if not, shall be diminished by the amount of such salary.

Sections 14 to 18 relate to licensed houses, and will be found *post*, (tit. "*Private Asylums*"), p. 678.

*Admission and Visitation of Patients.*

Provision for  
sending pauper  
lunatics to asy-  
lums.

Sect. 19. Whereas by the sixty-seventh section of the "Lunacy Act," chapter ninety-seven (*b*), it is amongst other things enacted as follows: "That every relieving officer of any parish within a union or under a board of guardians, and every overseer of a parish of which there is no relieving officer, who shall have knowledge either by such notice or otherwise that any pauper resident in such parish is or is deemed to be a lunatic and a proper person to be sent to an asylum, shall within three days after obtaining such knowledge give notice thereof to some justice

(a) See *ante*, 624.

(b) See *ante*, 627.

of the county or borough within which such parish is situate; " now be it enacted, that the said section shall be construed as if the words "and a proper person to be sent to an asylum" had been omitted in the said recited enactment.

2. *County and Public Lunatic Asylums, etc.*

Sect. 20. No person shall be detained in any workhouse, being a lunatic or alleged lunatic (*a*), beyond the period of fourteen days, unless in the opinion, given in writing, of the medical officer of the union or parish to which the workhouse belongs such person is a proper person to be kept in a workhouse, nor unless the accommodation in the workhouse is sufficient for his reception, and any person detained in a workhouse in contravention of this section shall be deemed to be a proper person to be sent to an asylum within the meaning of section sixty-seven of the "Lunacy Act," chapter ninety-seven (*b*); and in the event of any person being detained in a workhouse in contravention of this section, the medical officer shall for all the purposes of the "Lunacy Act," chapter ninety-seven, be deemed to have knowledge that a pauper resident within his district is a lunatic, and a proper person to be sent to an asylum, and it shall be his duty to act accordingly, and further to sign such certificate as is contained in Schedule F. to the said Act, No. 3 (*c*), with a view to more certainly securing the reception into an asylum of such pauper lunatic as aforesaid.

Lunatics proper to be sent to asylums.

Sect. 21. The list of lunatic paupers required by section sixty-six of the "Lunacy Act," chapter nine-seven (*d*), to be made out by the medical officer, shall be in the form in the Schedule marked B. hereto, and not in the form required by the said section, and shall, as respects such of the lunatics therein mentioned as may be in any workhouse, state whether, in the opinion of the medical officer, the workhouse is or not sufficient for the accommodation of the lunatics detained therein, and whether or not the lunatics detained therein are proper persons to be kept in a workhouse.

Amendment of form of list as respects pauper lunatics in workhouses.

Sect. 22 relates to visitation of persons found lunatic by inquisition, and will be found *post*, 731.)

Sect. 23 requires persons signing orders for the admission of private patients to have seen the patients within one month, and will be found *post*, 731.

Sect. 24 prohibits certain persons from signing orders for the admission of private patients, and will be found *post*, 731.

Sect. 25. Where an order is made, in pursuance of the "Lunacy Acts" or any of them, for the reception of any private or pauper lunatic into any asylum, registered hospital, or licensed house, there shall be inserted in every such order, wherever it be possible, the name and address of one or more of the relations of the lunatic; and in the event of his death it shall be the duty of the clerk of such asylum, the superintendent of such hospital, and the proprietor or superintendent of such licensed house, to send by post notice of his death in a prepaid letter addressed to such relation or one of such relations.

Relative of pauper to be named in order of admission.

Sect. 26. The order and certificate required by law for the detention of a patient as a pauper shall extend to authorize his detention, although it may afterwards appear that he is entitled to be classified as a private patient; and the order and certificates required by law for the detention of a patient as a private patient shall authorize his detention, although it may afterwards appear that he ought to be classified as a pauper patient.

Same order and certificates to justify detention of private patient as pauper.

(*a*) See provisions as to the care of chronic lunatics in workhouses, sect. 8 of this Act, *ante*, 670.

(*b*) See *ante*, 627.

(*c*) See *ante*, 659.

(*d*) See *ante*, 626.

2. *County  
and Public  
Lunatic  
Asylums, etc.*

Sect. 27 contains provisions as to defective certificates, and will be found *post*, 732.

Sect. 28 provides for the transmission of documents to the commissioners on the admission of a patient, and will be found *post*, 732.

Sect. 29 relates to licensed houses, and will be found *post*, 732.

Sects. 30 and 31 relate to the powers of the commissioners in lunacy as to the visitation of asylums, gaols, and workhouses, and the removal of lunatics from workhouses to asylums, and will be found *post*, 733.

Removal of  
single pauper  
patients to  
asylums.

Sect. 32. Any two or more of the commissioners in lunacy may visit any pauper lunatic or alleged lunatic not in an asylum, hospital, licensed house, or workhouse, and may, if they think fit so to do, call to their assistance a physician, surgeon, or apothecary, and examine such pauper; and, if such physician, surgeon, or apothecary sign a certificate with respect to such pauper, according to the form in schedule F. No. 3 annexed to the "Lunacy Act," chapter ninety-seven, and the commissioners are satisfied that such pauper is a lunatic, and a proper person to be taken charge of, and detained under care and treatment, they may, by an order under their hands, direct such lunatic or alleged lunatic to be received into an asylum, and any order so made shall have the same effect, and be obeyed by the same persons, and subject them to the same penalties in case of disobedience as an order made by a justice for the reception of a lunatic into an asylum under the 16 & 17 Vict. c. 97, s. 67.

Effect of order  
for removal.

Sect. 33. The order made by any two or more of the commissioners in lunacy in pursuance of this Act may authorize the admission of a lunatic not only into any asylum of the county or borough in which the parish or place from which the lunatic is sent is situate, but also into any other asylum for the reception of pauper lunatics of such county or borough, and also into any asylum for any other county or borough, or any hospital registered or house licensed for the reception of lunatics, under the same circumstances and subject to the same conditions under which an order of the justice or justices may authorize such admission in pursuance of the 16 & 17 Vict. c. 97, s. 72.

Statement of  
condition of  
pauper lunatics  
to be transmitted  
to guardians.

Sect. 34. The superintendent of every asylum shall, once at the least in each half year, transmit to the guardians of every union, and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, a statement of the condition of every pauper lunatic chargeable to such union or parish.

Sects. 35, 36, which do not relate to county or borough asylums, will be found *post*, 733.

Visiting com-  
mittee to enter  
observations in  
a book respect-  
ing dietary  
accommodation,  
etc., of lunatics  
in workhouses.

Sect. 37. The visiting committee of every union, and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, shall once at the least in each quarter of a year enter in a book to be provided and kept by the master of the workhouse such observations as they may think fit to make respecting the dietary, accommodation, and treatment of the lunatics or alleged lunatics for the time being in the workhouse of their union or parish (a), and the book containing the observations made in pursuance of this section by the visiting guardians or overseers shall be laid by the master before the commissioner or commissioners on his or their next visit.

*Miscellaneous Clauses.*

Sects. 38 and 39 relate to hospitals and licensed houses, and will be found *post*, 734.

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(a) As to lunatics in workhouses, see ss. 8 and 20 of this Act, *ante*, 670, 673.

Sect. 40 relates to the correspondence of private and single patients, and will be found *post*, 734.

Sects. 41 to 43 will be found *post*, 735.

Sect. 44. The superintendent of every asylum, and every person having the care or charge of a single patient, shall, in the event of the death of any patient, transmit to the coroner of the county or borough the same statement as is required by law to be transmitted in the case of the death of any patient in any hospital or licensed house, and if such coroner, after receiving such statement, thinks that any reasonable suspicion attends the cause and circumstances of the death of such patient, he shall summon a jury to inquire into the circumstances of such death.

Any superintendent or person in charge who makes default in complying with the requisitions of this section shall be guilty of a misdemeanour.

2. *County and Public Lunatic Asylums, etc.*

Report to coroner of death of patient.

Sect. 45. Section fourteen of the 18 & 19 Vict. c. 105, shall be repealed, and in lieu thereof be it enacted, where any pauper lunatic is not settled in the parish by which or at the instance of some officer or officiating clergyman of which he is sent to an asylum, registered hospital, or licensed house, and it cannot be ascertained in what parish such pauper lunatic is settled, and such lunatic is found in a borough which has a separate court of sessions of the peace, and is not liable, under the 5 & 6 Will. 4, c. 76, s. 117, to the payment of a proportion of the sums expended out of the county rate, or is found in any borough which under the 12 & 13 Vict. c. 82, is exempted from liability to contribute to the payment of the expenses incurred for maintaining pauper lunatics chargeable to the county in which such borough is situate, such lunatic shall be adjudged to be chargeable to the borough in which he is found; and it shall not be lawful for any justices to adjudge such lunatic to be chargeable to any county, nor to make any order upon the treasurer of any county for the payment of any expenses whatsoever incurred or to be incurred in respect of such lunatic.

Chargeability of pauper lunatics whose settlements cannot be ascertained where found in certain boroughs.

All the provisions in the "Lunacy Act," chapter ninety-seven, as to the mode of determining that a pauper lunatic is chargeable to a county, and as to the orders to be made for payment of expenses and other moneys in respect of such lunatic, and for the repayment thereof to the treasurer of a county, shall extend to the case of a borough to which a lunatic is made chargeable under this section as if the said provisions were re-enacted in this Act, and such borough were therein mentioned or referred to instead of a county.

Sect. 46, amending 8 & 9 Vict. c. 100, will be found *post*, 736.

Sect. 47. The term physician, surgeon, or apothecary, wherever used in the "Lunacy Acts," shall mean a person registered under the "Medical Act," 21 & 22 Vict. c. 90.

Definition of physician, surgeon, or apothecary.

Sect. 48. So much of sect. 132 of the 16 & 17 Vict. c. 97, as enacts that in that Act, unless there be something in the subject or context repugnant to such construction, the word "county" shall mean a county of a city or county of a town, shall, except with respect to the city of London, be repealed, and all the provisions of the said Act and of the Acts amending the same shall be read and construed accordingly.

Part of sect. 132 of 16 & 17 Vict. c. 97, repealed.

#### SCHEDULE A.

For this schedule see *post*, 736.



2. *County  
and Public  
Lunatic  
Asylums, etc.*

County of \_\_\_\_\_  
Union [or parish of] \_\_\_\_\_  
District of \_\_\_\_\_

## SCHEDULE B.

Quarterly list of lunatic paupers within the district of the union of \_\_\_\_\_, in the county or borough of \_\_\_\_\_, not in any asylum, registered hospital, or licensed house.

Name.	Sex.	Age.	Form of Mental Disorder.	Duration of present Attack of Insanity, and if idiotic, whether or not from Birth.	Resident in Workhouse.	Non-resident in Workhouse, where and with whom resident.	Date of Visit.	In what condition, and, if ever restrained, why, and by what means, and how often.

I declare that I have personally examined the several persons whose names are specified in the above list on the days set opposite their names; and I certify, firstly, with respect to those appearing by the above list to be in the workhouse, that the accommodation in the workhouse is sufficient for their reception, and that they are all [or all except A. B. and C. D.] proper patients to be kept in the workhouse; and, secondly, with respect to those appearing by the above list to be resident elsewhere than in the workhouse, that they are all [or all except A. B. and C. D.] properly taken care of, and may properly remain out of an asylum.

I declare that the persons in the above list are to the best of my knowledge the only pauper lunatics in the district of the union of \_\_\_\_\_ [or in the parish of \_\_\_\_\_] who are not in an asylum, registered hospital, or duly licensed house,

(Signed) A. B.,  
Medical officer of the \_\_\_\_\_ district of  
the union [or parish] of \_\_\_\_\_

Dated the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred and \_\_\_\_\_

The 26 & 27 Vict. c. 110, intituled, "An Act to Amend the Lunacy Acts in relation to the Building of Asylums for Pauper Lunatics" [28th July, 1863], reciting that, by the "Lunatic Asylums Act, 1853," the justices of every county and borough are required to provide an asylum for the reception of their pauper lunatics; but power is given to two or more counties and boroughs to unite together for the purpose of providing an asylum for their common use; and that, by the said Act, "county" is defined to include a county of a city or county of a town, and "borough" is defined to mean every borough, town, and city corporate having a quarter sessions, recorder, and clerk of the peace; and that, by the "Lunacy Acts Amendment Act, 1862," it is provided that the word "county" shall not, except in the case of the city of London, mean a county of a city or county of a town; and that, certain counties of towns have quarter sessions, but such quarter sessions are not held by

a recorder; and that, at the date of the passing of the last-mentioned Act, certain agreements were pending for the union, with a view to a common asylum, of certain counties, including counties of towns; and that it is expedient to confirm such agreements in certain cases, notwithstanding that, by virtue of the last-mentioned Act, a county of a town is no longer included under the term "county," and is by such exclusion rendered incapable of carrying into effect such agreement; enacts as follows:—

2. *County and Public Lunatic Asylums, etc.*

Sect. 1. Where, in pursuance of the "Lunatic Asylums Act, 1853" (a), an agreement for providing a common asylum has been duly entered into between divers counties, properly so called, and such agreement has been afterwards varied by the admission as a party thereto of a county of a city or county of a town, the original agreement shall be binding on the counties originally parties thereto, in the same manner as if no variation of such agreement had been made.

Confirmation of certain agreements between counties, for providing a common asylum.

Sect. 2. Whereas, by the 8th section of the "Lunacy Acts Amendment Act, 1862" (b), it is provided to the effect, that it shall be lawful for the visitors of any asylum, and the guardians of any parish or union within the district for which the asylum has been provided, to make arrangements, subject to such approval as therein mentioned, for the reception and care in the workhouse of the parish or union of a limited number of chronic lunatics, to be selected as therein mentioned: and whereas doubts are entertained whether the expression "chronic lunatics," therein mentioned, includes lunatics chargeable to parishes or unions other than the parish or union into the workhouse of which they are proposed to be received; now it is hereby declared, that the words "chronic lunatics" in the said section include chronic lunatics chargeable to other parishes or unions, as well as chronic lunatics chargeable to the parish or union into the workhouse of which they are proposed to be received.

Explanation of sect. 8 of the 25 & 26 Vict. c. 111.

Sect. 3. This Act may be cited for all purposes as "The Lunacy Acts Amendment Act, 1863."

Short title.

The 28 & 29 Vict. c. 80, intituled, "An Act to Explain and Amend the Lunatic Asylums Act, 1853, and the Lunacy Acts Amendment Act, 1862, with reference to Counties of Towns which have Courts of Quarter Sessions, but no Recorder" [29th June, 1865], after reciting that by the "Lunatic Asylums Act, 1853" (c), "county" is defined to include a county of a city or county of a town, and borough is defined to mean every borough, town, and city corporate having a quarter sessions, recorder, and a clerk of the peace: and that by the "Lunacy Acts Amendment Act, 1862" (d), it is provided that the word "county" shall not, except in the case of the city of London, mean a county of a city or county of a town; and that certain counties of cities and counties of towns have quarter sessions and clerks of the peace, but no recorders, wherefore the same do not come within the provisions of the "Lunatic Asylums Act, 1853," and the Acts construed as one therewith: and that it is expedient to remedy such defect: enacts as follows:—

Sect. 1. That the word "county" in the "Lunatic Asylums Act, 1853," and the several Acts construed as one therewith, shall be construed to include every county of a city or county of a town having quarter sessions and a clerk of the peace, and no recorder,

Definition of the word "county."

Sect. 2. The justices of every county of a city or county of a town having quarter sessions and a clerk of the peace, and no recorder, shall have all the powers and authorities conferred on or given to the justices of every borough not having any asylum by sect. 7 of the "Lunatic

Powers of justices of such counties.

(a) See *ante*, 601.

(b) See *ante*, 670.

(c) Sect. 132, *ante*, 652.

(d) Sect. 48, *ante*, 676.

3. *Private Lunatic Asylums.*

Asylums Act, 1853" (a), notwithstanding such county of a city or town may have an asylum of its own: Provided always that it shall not be obligatory on any such county of a city or town to keep up and maintain any asylum from and after or during such time as it shall avail itself of the provisions of the said section.

This and the recited Acts to be construed together.

Sect. 3. This Act shall be construed as one with the "Lunatic Asylums Act, 1853," and several Acts construed as one therewith, and may be cited for all purposes as "The Lunacy Acts Amendment Act, 1865."

### III. Private Lunatic Asylums. Sending of Pauper Lunatics into.

The 8 & 9 Vict. c. 100, intituled, "An Act for the Regulation of the Care and Treatment of Lunatics" [4th August, 1845] enacts as follows:—

Repeal of former Acts.

Sect. 1. The 2 & 3 Will. 4, c. 107, 3 & 4 Will. 4, c. 64, 5 & 6 Will. 4, c. 22, 1 & 2 Vict. c. 73, 5 Vict. c. 4, and the 5 & 6 Vict. c. 87, "shall be and the same are hereby repealed, save and except so far as they or any of them repeal any other Act: Provided always that until the appointment for any jurisdiction of visitors and their clerk under the provisions of this Act the visitors and clerk appointed for such jurisdiction under the said repealed Acts or any of them shall respectively have and perform the powers, authorities and duties which they would have respectively had or performed if appointed under this Act: Provided also, that all licences heretofore granted shall remain in force for the periods for which they were respectively granted, unless revoked as hereinafter provided: and that all orders, matters and things which have been granted, made, done or directed to be done in pursuance of the said repealed Acts or any of them shall be and remain as good, valid and effectual to all intents and purposes as if the said repealed Acts had not been repealed, except so far as such orders, matters or things are expressly made void or affected by this Act; and that all fees, charges and expenses which have become payable under the said repealed Acts or any of them shall be payable in the same manner and from the same funds as would have been applicable thereto in case such Acts had not been repealed."

Proviso that present visitors and clerk shall act under this Act till new ones are appointed; and that licences heretofore granted shall remain in force, unless, etc.

Commissioners in lunacy under 5 & 6 Vict. c. 84, to be henceforth called "The Masters in Lunacy."

Sect. 2. "That the persons already appointed and hereafter to be appointed" under the 5 & 6 Vict. c. 84, "whereby the Lord Chancellor is empowered to appoint two persons, to be called 'the commissioners in lunacy,' shall henceforth be and be called 'the masters in lunacy,' and shall take the same rank and precedence as the masters in ordinary of the High Court in Chancery."

Appointment of "The Commissioners in Lunacy."

Sect. 3 provides that eleven persons therein named, and their respective successors, to be appointed as hereinafter provided, shall be commissioners for the purposes of this Act, to be called "The Commissioners in Lunacy;" and further provides that such commissioners shall hold their offices "during good behaviour, and shall not, so long as they shall remain such commissioners, and receive any salary under this Act, accept, hold, or carry on any other office or situation, or any profession or employment, from which any gain or profit shall be derived; and that there shall be paid to each of the six commissioners for the time being who shall be physicians, surgeons, or barristers of five years' standing and upwards, out of the moneys and funds hereinafter mentioned, over and above their respective travelling and other expenses whilst employed

Salary.

in visiting any houses, hospitals, asylums, gaols, workhouses, or other places, in pursuance of this Act, the yearly salary of one thousand and five hundred pounds," to be paid as therein mentioned.

Sect. 4 provides that in case of the death, removal, disqualification, refusal, or disability of any commissioners, others shall be appointed.

Sect. 5 provides as to retiring pensions to incapacitated commissioners.

Sect. 6. That every person hereby or hereafter appointed a commissioner under this Act shall, before he acts in the execution of his duty as a commissioner, take an oath to the following effect (that is to say),

*I, A. B., do swear, that I will discreetly, impartially and faithfully execute all the trusts and powers committed unto me by virtue of an Act of Parliament made in the ninth year of the reign of her Majesty Queen Victoria, intituled [here insert the title of the Act]; and that I will keep secret all such matters as shall come to my knowledge in the execution of my office (except when required to divulge the same by legal authority, or so far as I shall feel myself called upon to do so for the better execution of the duty imposed on me by the said Act). So help me God.*

Which oath it shall be lawful for the Lord Chancellor to administer to every such commissioner; and any three of the commissioners who shall have previously taken the oath are hereby authorized to administer such oath to any other commissioner.

Sect. 7. That the commissioner shall cause to be made a seal of the commission, and shall cause to be sealed or stamped therewith all licences, orders, and instruments granted or made, or issued, or authorized by the commissioners, in pursuance of this Act, except such orders or instruments as are hereinafter required or directed to be given or signed and sealed by one commissioner or two commissioners; and all such licences, orders, and instruments, or copies thereof, purporting to be sealed or stamped with the seal of the commission, shall be received as evidence of the same respectively, and of the same respectively having been granted, made, issued or authorized by the commissioners, without any further proof thereof; and no such licence, order, or instrument, or copy thereof, shall be valid, or have any force or effect, unless the same shall be so sealed or stamped as aforesaid.

Sect. 8 provides for the election by the commissioners of a permanent chairman.

Sects. 9 and 10 provide for the appointment, salary, and retiring pension of the secretary to the commissioners.

Sect. 11 provides as to the appointment and salaries of clerks to the commissioners.

Sect. 12. That every person appointed to be secretary or clerk as aforesaid shall, before he shall act as such secretary or clerk, take the following oath, to be administered by any one of the commissioners:

*I, A. B., do swear, that I will faithfully execute all such trusts and duties as shall be committed to my charge as secretary to the commissioners in lunacy [or as clerk to the commissioners in lunacy, as the case may be]; and that I will keep secret all such matters as shall come to my knowledge in the execution of my office (except when required to divulge the same by legal authority). So help me God.*

Sect. 13 provides for the delivery (by the clerk to the metropolitan commissioners) of all documents, etc., to the commissioners under this Act.

Sect. 14. That it shall be lawful for the commissioners (if and when they shall think fit) to grant a licence to any person (a) to keep a house

### 3. *Private Lunatic Asylums.*

In case of death etc., other commissioners to be appointed.

Retiring Pensions.

Commissioners to take the following oath.

Commissioners to have a common seal.

Evidence.

Chairman.

Secretary.

Clerks.

Secretary and clerks to take an oath.

Documents.

Jurisdiction within which commissioners

(a) See 16 & 17 Vict. c. 96, s. 2, *post*, 714, requiring the person, or one of the persons, to reside on the premises.

### 3. *Private Lunatic Asylums.*

are to grant licences, and termed their immediate jurisdiction, defined.

for the reception of lunatics, or of any sex or class of lunatics, within the places following (that is to say); the cities of London and Westminster, the county of Middlesex, the borough of Southwark, and the several parishes and places hereinafter mentioned (that is to say), Brixton, Battersea, Barnes, Saint Mary Magdalen, Bermondsey, Christ Church, Clapham, Saint Giles, Camberwell, Dulwich, Saint Paul, Deptford, Gravenay, Kew Green, Kennington, Saint Mary, Lambeth, Mortlake, Merton, Mitcham, Saint Mary, Newington, Norwood, Putney, Peckham, Saint Mary, Rotherhithe, Roehampton, Streatham, Stockwell, Tooting, Wimbledon, Wandsworth, and Walworth, in the county of Surrey; Blackheath, Charlton, Deptford, Greenwich, Lewisham, Lee, Southend, and Woolwich, in the county of Kent; and East Ham, Layton, Laytonstone, Low Layton, Plaistow, West Ham, and Walthamstow, in the county of Essex; and also within every other place (if any) within the distance of seven miles from any part of the said cities of London or Westminster, or of the said borough of Southwark; all which cities, county, borough, parishes and places aforesaid shall be and are hereafter referred to as the immediate jurisdiction of the commissioners,

Commissioners to hold quarterly and special meeting for granting licences.

Sect. 15. That the commissioners or some five of them shall meet at the usual offices or place of business which shall for the time being be occupied or used by the said commissioners, or at such other place as the Lord Chancellor may direct, on the first Wednesday in the months of February, May, July, and November in every year, in order to receive applications from persons requiring houses to be licensed for the reception of lunatics within the immediate jurisdiction of the commissioners, and (if they shall think fit) to license the same; and in case on any such occasion five commissioners shall not be present the meeting shall take place on the next succeeding Wednesday, and so on weekly until five commissioners shall be assembled; and the commissioners assembled at every such meeting shall have the power to adjourn such meeting from time to time and to such place as they shall see fit: Provided always, nevertheless, that it shall be lawful for any five of the commissioners at any other time, at any meeting duly summoned under the provisions in that behalf hereinafter contained (a), to receive applications from persons requiring houses to be licensed as aforesaid, and, if they shall think fit, to license the same.

Provision for summoning special meetings.

Sect. 16. That when and so often as any commissioner shall by writing under his hand require the secretary to convene a meeting of the commissioners for a purpose or purposes specified in such writing, or for the general despatch of business, such secretary is hereby required to convene such meeting by summons to the other commissioners, or such of them as shall be then in England and shall have an address known to the secretary, and to give them, as far as circumstances will admit, not less than twenty-four hours' notice of the place, day and hour where and on and at which such meeting is intended to be held, and also to state in the summons the purpose or purposes of such meeting, as specified by the commissioner requiring the same to be convened; and then and in every such case it shall be lawful for any three of the commissioners to assemble themselves to consider, and (if they shall think fit) to execute the purpose or purposes of such meeting: Provided always, nevertheless, that nothing shall be done at any such meeting, at which less than five commissioners shall be present, which by this Act is required to be done by five commissioners: provided also, that every such meeting shall, as far as circumstances will admit, be held at the usual office or place of business of the commissioners.

The justices of the peace in

Sect. 17. That in all places not being within the immediate jurisdic-

(a) See sect. 16, *infra*.

tion of the commissioners the justices for the county or borough (*a*), assembled in general or quarter sessions shall have the same authority (*b*) within their respective counties or boroughs to license (*c*) houses for the reception of lunatics as the commissioners within their immediate jurisdiction; and that the said justices shall, at the Michaelmas general or quarter sessions in every year, appoint three or more justices, and also one physician, surgeon, or apothecary (*d*), or more, to act as visitors (*e*) of every or any house or houses licensed for the reception of lunatics within the said counties or boroughs respectively: and such visitors shall at their first meeting take the oath required by this Act to be taken by the commissioners, *mutatis mutandis*, such oath to be administered by a justice.

Sect. 18. That in case at any time of the death, inability, disqualification, resignation, or refusal to act of any person so appointed a visitor as aforesaid, it shall be lawful for the justices of the county or borough (*a*), at any general or quarter sessions, to appoint a visitor (*e*) in the room of the person who shall die, or be unable or be disqualified, or resign, or refuse to act as aforesaid.

Sect. 19. That a list of the names, places of abode, occupation or professions of all visitors appointed as hereinbefore is directed shall, within fourteen days from the date of their respective appointments, be published by the clerk of the peace of the county or borough for which they shall be respectively appointed in some newspaper commonly circulated within the same county or borough, and shall within three days from the date of their respective appointments, be sent by the clerk of the peace to the commissioners; and every clerk of the peace making default in either of the respects aforesaid shall for every such default forfeit a sum not exceeding two pounds (*e*).

Sect. 20. That every such visitor as aforesaid, being a physician, surgeon, or apothecary, shall be paid out of the moneys or funds hereinafter mentioned for every day during which he shall be employed in executing the duties of this Act such sum as the justices of the county or borough shall in general or quarter sessions direct.

Sect. 21. That the clerk of the peace, or some other person to be appointed by the justices for the county or borough (*f*), in general or quarter sessions, shall act as clerk to the visitors so appointed as aforesaid, and such clerk shall summon the visitors to meet at such time and place, for the purpose of executing the duties of this Act, as the said justices in general or quarter sessions shall appoint; and every such appointment, summons, and meeting shall be made and held as privately as may be, and in such manner that no proprietor, superintendent, or person interested in or employed about or connected with any house to

### 3. Private Lunatic Asylums.

general or quarter sessions in all other parts of England to license houses for the reception of lunatics, and to appoint visitors.

For appointment of a visitor in the place of one dying, being unable, disqualified, etc.

Lists of visitors to be published by the clerk of the peace in a newspaper, and to be sent to the commissioners.

Every visitor, being a physician, surgeon, or apothecary, to be remunerated.

Clerk of the peace or some other person to be appointed by the justices to be clerk to visitors.

(*a*) As to the definition of "county" and "borough" see sections 114, 115, *post*, 708, 710. Justices of boroughs are, for the purposes of this Act, to assemble in special sessions, at such times as the quarter sessions of such borough shall be holden, sect. 115, *post*, 710.

(*b*) See note (*a*) to sect. 14 of this Act, *ante*, 679.

(*c*) See sect. 31, *post*, 684, providing that no licence shall be granted, and no visitor appointed by the justices for any borough without the consent of the recorder.

By 25 & 26 Vict. c. 111, s. 14, *post*,

729, before the grant of any licence by justices, to a house not previously licensed, notice must be given to the commissioners, who are to inspect the premises and to report; and no licence shall be granted until the report of the commissioners has been received and considered.

(*d*) See 25 & 26 Vict. c. 111, s. 47, *post*, 736.

(*e*) See sect. 106, *post*, 706, as to the persons to sue for penalties.

(*f*) By sect. 31, *post*, 684, the consent of the recorder of the borough is required in the case of an appointment by the justices of such borough.

### 3. *Private Lunatic Asylums.*

#### His duties and remuneration.

be visited shall have notice of such intended visitation ; any such clerk to the visitors shall, at their first meeting, take the oath required by this Act to be taken by the secretary of the commissioners, *mutatis mutandis*, such oath to be administered by one of the visitors, being a justice ; and the name, place of abode, occupation, and profession of the clerk to the visitors (whether the same shall be the clerk of the peace or any other person), shall within fourteen days after the appointment be published by the clerk of the peace for the county or borough in some newspaper commonly circulated therein, and within three days from the date of the appointment be communicated by the said clerk of the peace to the commissioners ; and every clerk of the peace making default in either of the respects aforesaid, shall for every such default forfeit a sum not exceeding two pounds ; and every such clerk to the visitors shall be allowed such salary or remuneration for his services (to be paid out of the moneys or funds hereinafter mentioned (a) as the justices for the county or borough shall in general or quarter sessions direct.

#### Provision for assistants to the clerk of the visitors.

Sect. 22. That if the clerk of any visitors shall at any time desire to employ an assistant in the execution of the duties of his office, such clerk shall certify such desire and the name of such assistant to one of the visitors, being a justice ; and if such visitor shall approve thereof, he shall administer the following oath to such assistant :—

#### Oath of assistant.

*I, A. B., do solemnly swear, that I will faithfully keep secret all such matters and things as shall come to my knowledge in consequence of my employment as assistant to the clerk of the visitors appointed for the county [or borough] of by virtue of an Act of Parliament passed in the ninth year of the reign of her Majesty Queen Victoria, intituled [here insert the title of the Act], unless required to divulge the same by legal authority.*  
*So help me God.*

And such clerk may thereafter, at his own cost, employ such assistant.

#### Persons interested in any licensed house, or being medical attendant on any patient therein, disqualified to act as commissioner, visitor, secretary, clerk, or assistant.

Sect. 23. That no person shall be or act as a commissioner, or visitor, or secretary, or clerk to the commissioners, or clerk or assistant clerk to any visitors, or act in granting any licence, who shall then be, or shall within one year then next preceding have been, directly or indirectly interested in any house licensed for the reception of lunatics, or the profits of such reception : and no physician or surgeon (being a commissioner), and no physician, surgeon, or apothecary (being a visitor), shall sign any certificate for the admission of any patient into any licensed house or hospital, or shall professionally attend upon any patient in any licensed house or hospital, unless he be directed to visit such patient by the person upon whose order such patient has been received into such licensed house or hospital, or by the Lord Chancellor, or her Majesty's principal secretary of state for the time being for the home department, or by a committee appointed by the Lord Chancellor ; and if any such commissioner, or visitor, or secretary, or clerk to the commissioners, or clerk or assistant clerk to any visitors, shall after his appointment be or become so interested in any house licensed for the reception of lunatics, or the profits of such reception, such commissioner, visitor, secretary, or clerk, or assistant clerk, as the case may be, shall immediately thereupon be disqualified from acting, and shall cease to act in such capacity ; and if any person, being disqualified as aforesaid, shall take the office of commissioner, visitor, secretary, clerk, or assistant clerk, or being a commissioner, visitor, secretary, clerk, or assistant clerk, shall become disqualified as aforesaid, and shall afterwards continue to act in such capacity, such person shall be guilty of a misdemeanour ; and if any physician or surgeon (being a commissioner), or any physician, surgeon, or apothecary (being a visitor), shall sign any certificate for the admission of any patient into any licensed house or hospital, or shall professionally attend any patient in

#### Disqualified persons acting a misdemeanour.

Physicians, etc., contravening, penalty £10.

(a) See sects. 33 and 36, *post*, 685, 686.

any licensed house or hospital (except as aforesaid), such physician, surgeon, or apothecary (as the case may be) shall for each offence against this provision forfeit the sum of ten pounds.

Sect. 24. That every person who shall desire to have a house licensed for the reception of lunatics shall give a notice, if such house be situate within the immediate jurisdiction of the commissioners, to the commissioners, and if elsewhere to the clerk of the peace for the county or borough in which such house is situate, fourteen clear days at the least prior to some quarterly or other meeting of the commissioners, or to some general or quarter sessions for such county or borough, as the case may be; and such notice shall contain the true Christian and surname, place of abode, and occupation of the person to whom the licence is desired to be granted, and a true and full description of his estate or interest in such house; and in case the person to whom the licence is desired to be granted does not propose to reside himself in the licensed house, the true Christian and surname and occupation of the superintendent who is to reside therein; and such notice, when given for any house which shall not have been previously licensed, shall be accompanied by a plan of such house, to be drawn upon a scale of not less than one-eighth of an inch to a foot, with a description of the situation thereof, and the length, breadth, and height of and a reference by a figure or letter to every room and apartment therein, and a statement of the quantity of land, not covered by any building, annexed to such house, and appropriated to the exclusive use, exercise, and recreation of the patients proposed to be received therein, and also a statement of the number of patients proposed to be received into such house, and whether the licence so applied for is for the reception of male or female patients, or of both, and if for the reception of both of the number of each sex proposed to be received into such house, and of the means by which the one sex may be kept distinct and apart from the other; and such notice, plan, and statement, when sent to the clerk of the peace, shall be laid by him before the justices of the county or borough at such time as they shall take into their consideration the application for such licence: Provided always, that it shall be lawful for any person to whom the licence shall be granted to remove the superintendent named in the notice, and at any time or times to appoint another superintendent, upon giving a notice containing the true Christian and surname and occupation of the new superintendent to the commissioners or the visitors of the house, as the case may require: Provided always, that all plans heretofore delivered shall be deemed sufficient for the purposes of this Act if the commissioners or justices, as the case may be, shall so think fit.

Sect. 25 is repealed by the 16 and 17 Vict. c. 96, s. 1 (*post*, 714), which makes provision as to what may be included in one licence.

Sect. 26. That no addition or alteration shall be made to, in, or about any licensed house, or the appurtenances, unless previous notice in writing of such proposed addition or alteration, accompanied with a plan of such addition or alteration, to be drawn upon the scale aforesaid, and to be accompanied by such description as aforesaid, shall have been given by the person to whom the licence shall have been granted to the commissioners or to the clerk of the peace, as the case may be, and the consent in writing of the commissioners, or of two of the visitors (*a*), as the case may be, shall have been previously given (*b*).

### 3. *Private Lunatic Asylums.*

Fourteen days' previous notice of intended application for and plan of licensed house to be given to the commissioners or clerk of the peace.

Notice of all additions and alterations to be given to the commissioners or clerk of the peace.

(*a*) By 25 & 26 Vict. c. 111, s. 15, *post*, 730, before the consent of the visitors is given, notice of the additions or alterations is to be given to the commissioners, and the visitors shall not consent to such additions and alterations until they have received and considered the report of

the commissioners.

(*b*) No penalty is annexed for the non-observance of this clause; but it is a misdemeanour wilfully to contravene the provisions of a statute. (*Rea v. Sainsbury*, 4 T. R. 457; *Rex v. Davis*, Say, 133.)



### 3. *Private Lunatic Asylums.*

Untrue statement a misdemeanour.

A copy of every licence granted by justices to be sent to the commissioners.

Every person applying for the renewal of a licence to furnish a statement of the number and class of patients then detained.

Licences to be made out in a given form, etc., and to be for not more than thirteen months.

No licence, etc., in any borough without consent of recorder.

Charge for licences to be granted in pursuance of this Act.

Sect. 27. That if any person shall wilfully give an untrue or incorrect notice, plan, statement, or description of any of the things hereinbefore required to be included in any notice, plan, or statement, he shall be guilty of a misdemeanour.

Sect. 28. That in every case in which a licence for the reception of lunatics shall after the passing of this Act be granted by any justices, the clerk of the peace for the county or borough shall, within fourteen days after such licence shall have been granted, send a copy thereof to the commissioners; and any clerk of the peace omitting to send such copy within such time shall for every such omission forfeit a sum not exceeding two pounds.

Sect. 29. That in every case in which any person shall apply for the renewal of a licence already granted or hereafter to be granted, such person, if applying to the commissioners, shall with such application transmit to the commissioners, and if applying to any justices (*a*) shall with such application transmit to the clerk of the peace for the county or borough, and also at the same time to the commissioners, a statement signed by the persons so applying, containing the names and number of the patients of each or either sex then detained in such house, and distinguishing whether such patients respectively are private or pauper patients; and any person who shall hereafter obtain the renewal of a licence without making such return or returns shall for every such offence forfeit the sum of ten pounds; and any person who shall make any such return untruly shall be guilty of a misdemeanour.

Sect. 30. That every licence shall, as nearly as conveniently may be, be according to the form in the schedule (A.) annexed to this Act (*b*), and shall be stamped with a ten shilling stamp, and shall be under the seal of the commissioners, if granted by them, and if by any justices under the hands and seals (*c*) of three or more such justices in general or quarter sessions assembled, and shall be granted for such period, not exceeding thirteen calendar months (*d*), as the commissioners or justices, as the case may be, shall think fit.

Sect. 31. That no licence shall be granted or visitor or clerk appointed by the justices for any borough without the consent in writing of the recorder of such borough to such grant or appointment.

Sect. 32. That for every licence to be hereafter granted there shall be paid to the secretary of the commissioners, or to the clerk of the peace, according as the licence shall be granted by the commissioners or justices (exclusive of the sum to be paid for the stamp) the sum of ten shillings and no more for every patient not being a pauper, and the sum of two shillings and sixpence and no more for every patient being a pauper (*e*), proposed to be received into such house, and if the total

(*a*) See sect. 67, *post*, 694, and 25 & 26 Vict. c. 111, s. 36, *post*, 733, requiring certain documents to be laid before the justices on taking into consideration the renewal of licences.

(*b*) Licences granted by justices, after the passing of 25 & 26 Vict. c. 111 (see sect. 14, *post*, 729), to a house not previously licensed, are to be in the form given in the schedule (A.) to that Act, which see *post*, 736.

As to penalties for infringing the terms of the licence, see 25 & 26 Vict. c. 111, s. 17, *post*, 731.

(*c*) Sealing is now dispensed with, see 18 & 19 Vict. c. 105, s. 15, *post*,

728. Documents theretofore duly signed, though not sealed, are thereby made valid.

(*d*) The powers of the commissioners under this Act, and the 16 & 17 Vict. c. 96, continue applicable to a house which has been licensed after the expiration of the licence, while any patients are therein, 18 & 19 Vict. c. 105, s. 9, *post*, 728.

The detention of lunatics after two months from the expiration of a licence is made a misdemeanour by 18 & 19 Vict. c. 105, s. 18, *post*, 729.

(*e*) For the definition of "pauper," see sect. 114, *post*, 708.

amount of such sums of ten shillings and two shillings and sixpence shall not amount to fifteen pounds, then so much more as shall make up the sum of fifteen pounds; and no such licence shall be delivered until the sum payable for the same shall be paid: Provided always, that if the period for which a licence shall be granted be less than thirteen calendar months it shall be lawful for the commissioners or the justices, as the case may be, to reduce the payment to be made on such licence to any sum not less than five pounds.

Sect. 33. That all moneys received for licences granted by the commissioners, and for searches made in pursuance of the provision for that purpose hereinafter contained (a), shall be retained by the secretary of the commissioners, and be applied by him in or towards the payment of the salaries and travelling and other expenses of the commissioners and of their secretary and clerks, and in or towards the payment or discharge of all or any costs, charges, and expenses incurred by or under the authority of the commissioners in the execution of or under or by virtue of this Act (b).

Sect. 34. That the secretary of the commissioners shall make out an account of all moneys received and paid by him as aforesaid, and of all moneys otherwise received and paid by him, and of all charges and expenses incurred under or by virtue of or in the execution of this Act; and such account shall be made up to the first day of August in each year, and shall be signed by five at least of the commissioners; and such account shall specify the several heads of charge and expenditure, and shall be transmitted to the lord high treasurer, or to the commissioners of her Majesty's treasury, who shall thereupon audit such account, and, if he or they shall deem it expedient, direct the balance (if any) remaining in the hands of the said secretary to be paid into the exchequer to the account of the consolidated fund; and such accounts shall be laid before Parliament on or before the twenty-fifth day of March in each year, if Parliament be then sitting, or if Parliament be not then sitting then within one month after the then next sitting of Parliament.

Sect. 35. That it shall be lawful for the lord high treasurer, or the commissioners of her Majesty's treasury, or any three or more of them, and they are hereby directed and empowered, from time to time (on an application to them, agreed to at some quarterly or other meeting of the commissioners, attended by five at least of the commissioners, and certified under their hands) to cause to be issued and paid out of the consolidated fund to the secretary of the commissioners such a sum of money as the commissioners shall in such application have certified to be requisite to pay and discharge so much of the salaries, costs, charges, and expenses hereinbefore (c) directed to be paid out of the moneys received by the said secretary for licences and otherwise as aforesaid as such moneys shall be inadequate to pay, and the said secretary shall thereupon apply such money in or towards the payment or discharge of such salaries, costs, charges, and expenses respectively; and that it shall be lawful for the lord high treasurer or the commissioners of her Majesty's treasury, or any three or more of them, from time to time to advance by way of imprest to the said secretary such sum or sums of money as to such lord high treasurer or commissioners of her Majesty's treasury may appear requisite and reasonable, for or towards the payment or discharge of all or any such salaries, costs, charges, or expenses as aforesaid, such sum or sums to be accounted for by the said secretary in his then next account.

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Power to reduce the charge for the licence in certain cases.

Application of moneys received for licences by the secretary of the commissioners.

Secretary of the commissioners to make out an annual account, to be laid before the lords commissioners of the treasury, of all receipts and payments by him under this Act.

Balance of payments over receipts may be paid out of the consolidated fund.

(a) See sect. 84, *post*, 698.

704, 707.

(b) See sects. 101 and 109, *post*,

(c) Sect. 33, *supra*,

### 3. *Private Lunatic Asylums.*

Application of moneys received for licences by clerks of the peace.

Clerks of the peace to make out annual accounts, to be laid before the justices in session, of all receipts and payments made under this Act.

Balance of payments over receipts may be paid out of the funds of the county or borough.

Provision in case of the incapacity or death of the person licensed.

Sect. 36. That all moneys to be received for licences granted by any justices shall be applied by the clerk of the peace for the county or borough in or towards the payment of the salary or remuneration of the clerk to the visitors for such county or borough, and in or towards the remuneration of such of the same visitors as are hereinbefore directed to be remunerated, and in or towards the payment or discharge of all costs, charges, and expenses incurred by or under the authority of the same justices or visitors in the execution of or under or by virtue of this Act (*a*).

Sect. 37. That the clerk of the peace for every county or borough shall keep an account of all moneys received and paid by him as aforesaid, and of all moneys otherwise received or paid by him under or by virtue of or in the execution of this Act; and such account shall respectively be made up to the first day of August in each year, and shall be signed by two at least of the visitors for the county or borough; and every such account shall be laid by the clerk of the peace before the justices at the Michaelmas general or quarter sessions, who shall thereupon direct the balance (if any) remaining in the hands of the clerk of the peace to be paid into the hands of the treasurer for such county or borough, in aid and as part of the county or borough rate.

Sect. 38. That it shall be lawful for the justices for any county or borough, in general or quarter sessions assembled (*b*), if they shall think fit, to order to be paid to the clerk of the peace of such county or borough, out of the rates or funds thereof, such sum or sums of money as they shall on examination deem to be necessary to pay and discharge so much of the salary, remuneration, costs, charges, and expenses hereinbefore directed to be paid out of the moneys received by such clerk of the peace for licences and otherwise as aforesaid as such moneys shall be inadequate to pay; and also that it shall be lawful for the justices in general or quarter sessions assembled, if they shall think fit, from time to time to order to be advanced out of the rates or funds of such county or borough, to the clerk of the peace, such sum or sums of money as to such justices may appear requisite and reasonable, for or towards the payment or discharge of any such salary, remuneration, costs, charges, or expenses as last aforesaid; and every such sum of money as aforesaid shall be paid and advanced out of the rates or funds of such county or borough by the treasurer thereof, and shall be allowed in his accounts, on the authority of the aforesaid order by the justices for the payment or advance thereof.

Sect. 39. That if any person to whom a licence shall have been granted under this Act or under any of the Acts hereinbefore repealed shall by sickness or other sufficient reason become incapable of keeping the licensed house, or shall die before the expiration of the licence, it shall be lawful for the commissioners or for any three justices for the county or borough, as the case may be, if they shall respectively think fit, by writing indorsed on such licence, under the seal of the commissioners or under the hands of such three justices, to transfer the said licence, with all the privileges and obligations annexed thereto, for the term then unexpired, to such person as shall at the time of such incapacity or death be the superintendent of such house, or have the care of the patients therein, or to such other person as the commissioners or such justices respectively shall approve, and in the meantime such licence shall remain in force and have the same effect as if granted to the superintendent of the house; and in case a licence has been or shall be granted to two or more persons, and before the expiration thereof any or either

(*a*) See sects. 101 and 109, *post*, 704, 707.

(*b*) See sect. 115, *post*, 710.

of such persons shall die, leaving the other or others surviving, such licence shall remain in force and have the same effect as if granted to such survivors or survivor.

Sect. 40. That if any licensed house shall be pulled down or occupied under the provisions of any Act of Parliament, or shall by fire, tempest, or other accident be rendered unfit for the accommodation of lunatics, or if the person keeping such house shall desire to transfer the patients to another house (*a*), it shall be lawful for the commissioners (if the new house shall be within their immediate jurisdiction), at any quarterly or other meeting, or for any two or more of the visiting justices for the county or borough within which the new house is situate, as the case may be, upon the payment to the secretary of the commissioners or the clerk of the peace, as the case may be, of not less than one pound for the licence (exclusive of the sum to be paid for the stamp), to grant to the person whose house has been so pulled down, occupied, or so rendered unfit, or who shall desire to transfer his patients as aforesaid, a licence to keep such other house for the reception of lunatics, for such time as the commissioners or the said justices, as the case may be, shall think fit: Provided always, that the same notice of such intended change of house, and the same plans and statements and descriptions of and as to such intended new house, shall be given as are required when application is first made for a licence for any house, and shall be accompanied by a statement in writing of the cause of such change of house; and that, except in cases in which the change of house is occasioned by fire or tempest, seven clear days' previous notice of the intended removal shall be sent, by the person to whom the licence for keeping the original house shall have been granted, to the person who signed the order for the reception of each patient, not being a pauper, or the person by whom the last payment on account of such patient shall have been made, and to the relieving officer or overseer of the union or parish to which each patient being a pauper is chargeable, or the person by whom the last payment on account of such patient shall have been made.

Sect. 41. That if a majority of the justices of any county or borough in general or quarter sessions assembled shall recommend to the Lord Chancellor that any licence granted by the justices for such county or borough, either before or after the passing of this Act, shall be revoked, it shall be lawful for the Lord Chancellor to revoke the same by an instrument under his hand and seal, such revocation to take effect at a period to be named in such instrument, not exceeding two calendar months from the time a copy or notice thereof shall have been published in the *London Gazette*; and a copy or notice of such instrument of revocation shall be published in the *London Gazette*, and shall before such publication be transmitted to the person to whom such licence shall have been granted, or to the resident superintendent of the licensed house, or be left at the licensed house: Provided always, that in case of any such revocation being recommended to the Lord Chancellor notice thereof in writing shall, seven clear days previously to the transmission of such recommendation to the Lord Chancellor, be given to the person the revocation of whose licence shall be recommended, or to the resident superintendent of the licensed house, or shall be left at the licensed house.

Sect. 42. That if the commissioners shall recommend to the Lord Chancellor that any licence granted either by the commissioners or by any justices, either before or after the passing of this Act, shall be revoked or shall not be renewed, it shall be lawful for the Lord Chancellor

### 3. *Private Lunatic Asylums.*

In case of a licensed house being taken for public purposes, or accidentally rendered unfit, or of the keeper wishing to transfer his patients to a new house.

Power of revocation of licences granted by justices (*b*).

Power of revocation and of prohibition of renewal of licences granted by the

(*a*) See provisions as to the change of residence of persons having charge of single patients, 16 & 17 Vict. c. 96, s. 22, *post*, 720.

(*b*) The detention of lunatics after the revocation of the licence is made a misdemeanour by 18 & 19 Vict. c. 105, s. 18, *post*, 729.

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commissioners or by justices (a).

by an instrument under his hand and seal to revoke or prohibit the renewal of such licence; and in the case of a revocation the same shall take effect at a period to be named in such instrument, not exceeding two calendar months from the time a copy or notice thereof shall have been published in the *London Gazette*; and a copy or notice of such instrument of revocation shall be published in the *London Gazette*, and shall before such publication be transmitted to the person to whom such licence shall have been granted or to the resident superintendent of the licensed house, or shall be left at the licensed house; Provided always, that in case of any such revocation or prohibition to renew being recommended to the Lord Chancellor, notice thereof in writing shall, seven clear days previously to the transmission of such recommendation to the Lord Chancellor, be given to the person the revocation or prohibition of renewal of whose licence shall be recommended, or to the resident superintendent of the licensed house, or shall be left at the licensed house.

Hospitals receiving lunatics to have their regulations printed, and a resident medical attendant, and to be registered (b).

Sect. 43. That the regulations as to lunatics of every hospital in which lunatics are or shall be received shall be printed, and complete copies thereof shall be sent to the commissioners, and also kept hung up in the visitors' room of such hospital; and that every such hospital shall have a physician, surgeon, or apothecary resident therein, as the superintendent and medical attendant thereof; and such superintendent shall immediately after the passing of this Act (or immediately after the establishment of such hospital, as the case may be) apply to the commissioners to have such hospital registered, and thereupon such hospital shall be registered in a book to be kept for that purpose by the commissioners; and in case the superintendent of any such hospital shall at any time omit to have copies of such regulations sent or hung up as aforesaid, or to apply to have such hospital registered as aforesaid, he shall for every such omission forfeit a sum not exceeding twenty pounds.

No house to be kept for the reception of two or more lunatics without a licence.

Sect. 44. That after the passing of this Act it shall not be lawful for any person to receive two or more lunatics into any house (c), unless such house shall be an asylum or an hospital registered under this Act, or house for the time being duly licensed under this Act, or one of the Acts hereinbefore repealed; and any person who shall receive two or more lunatics into any house other than a house for the time being duly licensed as aforesaid, or an asylum or an hospital duly registered under this Act, shall be guilty of a misdemeanour (d).

Sections. 45 to 49 inclusive, are repealed by the 16 & 17 Vict. c. 96, s. 3, *post*, 714. For the substituted provisions, see 16 & 17 Vict. c. 96, ss. 4, 5, 7, 10 & 12, *post*, 714-717.

Every person receiving a person as a lunatic into any house or hospital to make an entry thereof in a certain form.

Sect. 50. That every proprietor or superintendent who shall receive any patient into any licensed house or any hospital shall, within two days after the reception of such patient, make an entry with respect to such patient in a book to be kept for that purpose, to be called "The Book of Admissions" (e), according to the form and containing the par-

(a) See note (b) to the preceding section.

(b) The 16 & 17 Vict. c. 96, s. 30, *post*, 722, requires the regulations of hospitals to be submitted to the secretary of state.

(c) As to single lunatics see sect. 90 of this Act and notes thereon, *post*, 700.

(d) By 16 & 17 Vict. c. 96, s. 31, *post*, 722, the commissioners are empowered to make regulations for the government of licensed houses.

(e) In *Hill v. Philp* (7 *Exch. Rep.*,

232; 21 *L. J. Exch.* 82) it was decided that none of the books kept pursuant to this statute by the proprietor or superintendent of an asylum are privileged from production under an order for inspection under the 14 & 15 Vict. cap. 99, s. 6. If in answer to such application it was sworn that the production would afford evidence to support a criminal charge against the party, the production would not then be enforced. See also *Ruck v. Stilwell*, 1 *F. & F.* 546.

particulars required in schedule (E.) annexed to this Act, so far as he can ascertain the same, except as to the form of the mental disorder, and except also as to the discharge or death of the patient, which shall be made when the same shall happen; and every person who shall so receive any such patient, and shall not within two days thereafter make such entry as aforesaid (except as aforesaid), shall forfeit a sum not exceeding two pounds; and every person who shall knowingly and willingly in any such entry untrue set forth any of the particulars shall be guilty of a misdemeanour.

Sect. 51. That the form of the mental disorder of every patient received into any licensed house or any hospital shall within seven days after his reception be entered in the said book of admissions by the medical attendant of such house or hospital; and every such medical attendant who shall omit to make any such entry within the time aforesaid, shall for every such offence forfeit a sum not exceeding two pounds.

Sect. 52. That the proprietor or resident superintendent of every licensed house (whether licensed by the commissioners or by any justices), and the superintendent of every hospital shall, after two clear days, and before the expiration of seven clear days from the day on which any patient shall have been received into such house or hospital, transmit a copy of the order and medical certificates or certificate on which such person shall have been received, and also a notice and statement according to the form in schedule (F.) (a), annexed to this Act, to the commissioners (b); and the proprietor or resident superintendent of every house licensed within the jurisdiction of any visitors shall also within the same period transmit another copy of such order and certificates or certificate, and a duplicate of such notice and statement, to the clerk of the visitors; and every proprietor or superintendent of any such house or hospital who shall neglect to transmit such copy, notice or statement to the commissioners, or (where the same is required) to the clerk of the visitors, shall be guilty of a misdemeanour.

Sect. 53. That whenever any patient shall escape (c) from any licensed house or any registered hospital, the proprietor or superintendent of such house or hospital shall within two clear days next after such escape transmit a written notice thereof to the commissioners, and if such house be within the jurisdiction of any visitors, then also to the clerk of such visitors; and such notice shall state the Christian and surname of the patient who has so escaped, and his then state of mind, and also the circumstances connected with such escape; and if such patient shall be brought back to such house or hospital, such proprietor or resident superintendent shall, within two clear days next after such person shall be so brought back, transmit a written notice thereof to the commissioners, and also, if such house be within the jurisdiction of any visitors, to the clerk of such visitors; and such notice shall state when such person was so brought back, and the circumstances connected therewith, and whether with or without a fresh order and certificates or certificate; and every proprietor or resident superintendent omitting to

### 3. *Private Lunatic Asylums.*

Form of patient's disorder to be entered in "The Book of Admissions" by the medical attendant.

Every person receiving a patient into any house or hospital to transmit a notice thereof to the commissioners, and if within the jurisdiction of any visitors, then also to the clerk of such visitors.

Notices to be given in case of the escape of any patient, and of his being brought back.

(a) The notice and statement must now be according to the form in schedule C. to the 16 & 17 Vict. c. 96 (which see, *post*, 727); and such statement must be signed by the medical superintendent, proprietor, or attendant of the hospital, or licensed house from which it is sent, and must be accompanied by a copy of the several documents mentioned in the notice

(16 & 17 Vict. c. 96, s. 24, *post*, 720).

(b) The time within which these documents must be transmitted to the commissioners is altered by 25 & 26 Vict. c. 111, s. 28; which see *post*, 732.

(c) For the penalty on officers, etc., permitting the escape of a patient, by wilful neglect or connivance, see 25 & 26 Vict. c. 111, s. 39, *post*, 734.

### 3. *Private Lunatic Asylums.*

Entry to be made, and notice given, in case of the death, discharge or removal of any patient.

In case of the death of a patient, a statement of the cause of death to be transmitted to the commissioners, and, if within the jurisdiction of any visitors, to the clerk of the visitors also.

Abuse or ill-treatment or (in certain cases) neglect of a patient to be a misdemeanour.

Houses having 100 patients to have a resident

transmit such notice, whether of escape or of return, shall for every such omission forfeit a sum not exceeding ten pounds.

Sect. 54. That whenever any patient shall be removed or discharged from any licensed house or any hospital, or shall die therein, the proprietor or superintendent of such house or hospital shall, within two clear days next after such removal, discharge, or death (*a*), make an entry thereof in a book to be kept for that purpose according to the form, and stating the particulars in schedule (G. 1) annexed to this Act, and shall also within the same two days transmit a written notice thereof, and also of the cause of his death, to the commissioners (*b*), and also, if such house shall be within the jurisdiction of any visitors, to the clerk of such visitors, according to the form and containing the particulars in schedule (G. 2) annexed to this Act; and every proprietor or superintendent of any such house or hospital who shall neglect to make such entry or transmit such notice or notices, or shall therein set forth any thing untrue, shall be guilty of a misdemeanour.

Sect. 55. That in case of the death of any patient (*a*) in any licensed house or any hospital, a statement of the cause of the death of such patient, with the name of any person present at the death, shall be drawn up and signed by the medical attendant of such house or hospital, and a copy thereof, duly certified by the proprietor or superintendent of such house or hospital, shall by him be transmitted to the commissioners, and also to the person signing the order for such patient's confinement, and to the registrar of deaths for the district, and if such house be within the jurisdiction of any visitors, then also to the clerk of such visitors, within forty-eight hours after the death of such patient (*c*); and every medical attendant, proprietor, or superintendent who shall neglect or omit to draw up, sign, certify, or transmit such statement as aforesaid shall for every such neglect or omission forfeit and pay a sum not exceeding fifty pounds.

Sect. 56. That if any superintendent, officer, nurse, attendant, servant, or other person employed in any licensed house or registered hospital shall in any way abuse or ill-treat any patient confined therein, or shall wilfully neglect any such patient, he shall be deemed guilty of a misdemeanour (*d*); and that in the event of the release of any person from confinement in any asylum or private house who shall consider himself to have been unjustly confined, a copy of the certificates and order upon which he has been confined shall at his request be furnished to him or to his attorney by the clerk to the commissioners, without any fee or reward for the same; and it shall be lawful for the home secretary, on the report of the commissioners or visitors of any asylums, to direct her Majesty's attorney-general to prosecute on the part of the crown any person who shall have been concerned in the unlawful taking or confinement of any of her Majesty's subjects as an insane patient, and likewise any person who shall have been concerned in the neglect or ill-treatment of any patient or person so confined.

Sect. 57. That in every house licensed for one hundred patients or more there shall be a physician, surgeon, or apothecary resident as the

(*a*) Notice of the death of a patient must be sent, by post, to one of the relations named in the order for reception (25 & 26 Vict. c. 111, s. 25, *post*, 732.

(*b*) Like notice of discharge of a single patient must be given to the commissioners, 16 & 17 Vict. c. 96, s. 21, *post*, 720.

(*c*) Notice of the death must also be

given to the coroner, see 16 & 17 Vict. c. 96, s. 19, *post*, 719.

(*d*) By 16 & 17 Vict. c. 96, s. 9 (*post*, 716), these provisions are extended to persons having charge of a single lunatic. By the same section, persons offending are made liable to a penalty, not exceeding £20 for every offence, on summary conviction before two justices.

superintendent or medical attendant thereof; and that every house licensed for less than one hundred and more than fifty patients (in case such house shall not be kept by or have a resident physician, surgeon, or apothecary), shall be visited daily by a physician, surgeon, or apothecary; and that every house licensed for less than fifty patients (in case such house shall not be kept by or have a resident physician, surgeon, or apothecary), shall be visited twice in every week by a physician, surgeon, or apothecary: Provided always, that it shall be lawful for the visitors of any licensed house to direct that such house, and for the commissioners to direct that any licensed house, shall be visited by a physician, surgeon, or apothecary at any other time or times, not being oftener than once in every day.

Sect. 58. Provided always, that when any house is licensed to receive less than eleven lunatics, it shall be lawful for any two of the commissioners or any two of the visitors of such house, if they shall respectively so think fit, by any writing under their hands, to permit that such house shall be visited by a physician, surgeon, or apothecary at such intervals more distant than twice in every week as such commissioners or visitors shall appoint, but not at a greater interval than once in every two weeks.

Sect. 59. That every physician, surgeon, or apothecary, where there shall be only one, keeping or residing in or visiting any licensed house or any hospital, and where there shall be two or more physicians, surgeons, or apothecaries, keeping or residing in or visiting any licensed house or any hospital, then one at least of such physicians, surgeons, or apothecaries, shall once in every week (or, in the case of any house at which visits at more distant intervals than once a week are permitted, on every visit) enter and sign in a book to be kept at such house or hospital for that purpose, to be called 'The Medical Visitation Book' (a), a report, showing the date thereof, and also the number, sex, and state of health of all the patients then in such house or hospital, the Christian and surname of every patient who shall have been under restraint, or in seclusion, or under medical treatment, since the date of the last preceding report, the condition of the house or hospital, and every death, injury, and act of violence which shall have happened to or affected any patient since the then last preceding report, according to the form in schedule (H.) (b) annexed to this Act; and every such physician, surgeon, or apothecary who shall omit to enter or sign such report as aforesaid shall for every such omission forfeit and pay the sum of twenty pounds; and every such physician, surgeon, or apothecary who shall in any such report as aforesaid enter anything untruly shall be guilty of a misdemeanour.

Sect. 60. That there shall be kept in every licensed house and in every hospital a book to be called 'The Case Book' (a), in which the physician, surgeon, or apothecary keeping or residing in or visiting such house or hospital shall from time to time make entries of the mental state and bodily condition of each patient, together with a correct description of the medicine and other remedies prescribed for the treatment of his disorder; and that it shall be lawful for the commissioners from time to time, by any order (c) under their common seal, to direct the form in which such case book shall be kept by such physician, surgeon,

### 3. *Private Lunatic Asylums.*

medical attendant, and houses having less to be visited by a medical attendant.

The commissioners and visitors, in houses licensed for less than eleven persons, may lessen the number of medical visits.

A book to be kept, to be called 'The Medical Visitation Book,' in which a weekly entry is to be made, showing the condition of the house and of the patients.

A medical case book to be kept.

(a) As to production of the books kept pursuant to this Act, in actions for false imprisonment, etc., see note (a) to sect. 50, *ante*, 688.

(b) The medical visitation book must now be in the form in schedule

D. to the 16 & 17 Vict. c. 96 (which see, *post*, 728); 16 & 17 Vict. c. 96, s. 25.

(c) See order made in pursuance of this section, 'Shelford on Lunatics,' 2nd edition, p. 675, n. (a).



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or apothecary; and immediately after a copy of such order shall have been transmitted by the secretary of the commissioners to such physician, surgeon, or apothecary, such physician, surgeon, or apothecary shall thereupon keep such case book in the form which shall be directed by such order; and that it shall be lawful for the commissioners (whenever they shall see fit) to require, by an order in writing under their common seal, such physician, surgeon, or apothecary to transmit to the commissioners a correct copy of the entries or entry in any case book kept under the provisions of this Act, relative to the case of any lunatic who is or may have been confined in any such licensed house or hospital; and every such physician, surgeon, or apothecary who shall neglect to keep the said case book, or to keep the same according to the form directed by the commissioners, or to transmit a copy of the said entry or entries, pursuant to such order or orders as aforesaid, shall for every such neglect forfeit any sum not exceeding ten pounds.

All licensed  
houses and hos-  
pitals to be  
visited by the  
commissioners.

Sect. 61. That every licensed house shall, without any previous notice, be visited by two at least of the commissioners (*a*) (one of whom shall be a physician or surgeon, and the other a barrister) four times at the least in every year, if such house shall be within the immediate jurisdiction of the commissioners, and if not, twice at least in every year; and every hospital in which lunatics shall be received shall, without any previous notice, be visited by two at least of the said commissioners (*b*) (one of whom shall be a physician or surgeon, and the other a barrister) once at least in every year; and every such visit shall be made on such day or days, and at such hours of the day, and for such length of time, as the visiting commissioners shall think fit, and also at such other times (if any) as the said commissioners in lunacy shall direct; and such visiting commissioners, when visiting such house or hospital, may and shall inspect every part of such house or hospital, and every outhouse, place, and building communicating with such house or hospital, or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined in such house or hospital, and inquire whether any patient is under restraint, and why, and inspect the order and certificates or certificate for the reception of every patient who shall have been received into such house or hospital since the last visit of the commissioners, and in the case of any house licensed by justices shall consider the observations made in the visitors' book for such house by the visitors appointed by the justices, and enter in the visitors' book of such house or hospital a minute of the then condition of the house or hospital, and of the patients therein, and the number of patients under restraint, with the reasons thereof, as stated, and such irregularity (if any) as may exist in any such order or certificate as aforesaid, and also whether the previous suggestions (if any) of the visiting commissioners or visitors have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise, and also, if such visit be the first after the grant-

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(*a*) The 25 & 26 Vict. c. 111, s. 29 (*post*, 732), enacts that every licensed house may be visited at any time, and if situate within their immediate jurisdiction shall be visited twice at least in every year by any one or more of the commissioners, in addition to the visits required by this section. Every commissioner visiting alone shall have the same powers as two commissioners would have under this section; and all the provisions

in sects. 63 to 67 of this Act shall apply to a commissioner so visiting alone.

(*b*) The 25 & 26 Vict. c. 111, s. 30 (*post*, 733), provides that a single commissioner may at any time visit hospitals in addition to the visits required by this section; and every commissioner so visiting alone shall have the same powers as two commissioners would have under this section.

ing a licence to the house, shall examine such licence, and, if the same be in conformity with the provisions of this Act, sign the same, but if it be informal, enter in such visitors' book in what respect such licence is informal: Provided also, that it shall be lawful for the Lord Chancellor, on a representation by the commissioners setting forth the expediency of such alteration, by any writing under his hand, to direct that any house licensed by justices shall (during such period as he shall therein specify, or until such his direction shall be revoked) be visited by the commissioners once only in the year, and also to direct that any house licensed by the commissioners, and not receiving any pauper patients therein, shall (during such period as he shall therein specify, or until such his direction shall be revoked) be visited by the commissioners twice only in the year.

Sect. 62. That every licensed house (a) within the jurisdiction of any visitors appointed by justices shall be visited by two at least of the said visitors (b) (one of whom shall be a physician, surgeon, or apothecary) four times at the least in every year, on such days, and at such hours in the day, and for such length of time as the said visitors shall think fit, and also at such other times (if any) as the justices by whom such house shall have been licensed shall direct; and such visitors when visiting any such house may and shall inspect every part of such house, and every out-house, place, and building communicating therewith or detached therefrom, but not separated by ground belonging to any other person, and every part of the ground or appurtenances held, used, or occupied therewith, and see every patient then confined therein, and inquire whether any patient is under restraint, and why, and inspect the order and certificates or certificate for the reception of every patient who shall have been received into such house since the last visit of the visitors, and enter in the visitors' book a minute of the then condition of the house, of the patients therein, and the number of patients under restraint, with the reasons thereof as stated, and such irregularity (if any) as may exist in any such order or certificates as aforesaid, and also whether the previous suggestions (if any) of the visitors or visiting commissioners have or have not been attended to, and any observations which they may deem proper as to any of the matters aforesaid or otherwise.

Sect. 63. That the proprietor or superintendent of every licensed house or hospital shall show to the commissioners and visitors respectively visiting the same every part thereof respectively, and every person detained therein as a lunatic; and every proprietor or superintendent of any licensed house or any hospital who shall conceal or attempt to conceal, or shall refuse or wilfully neglect to show, any part of such house or hospital, or any house, out-house, place, or building communicating therewith or detached therefrom, but not separated as aforesaid, or any part of the ground or appurtenances held, used, or occupied therewith, or any person detained or being therein, from any visiting commissioners or visitors, or from any person authorized under any power or provision of this Act to visit and inspect such house or hospital, or the patients confined therein or any of them, shall be guilty of a misdemeanour.

Sect. 64. That the visiting commissioners and visitors respectively, upon their several visitations to every licensed house and to every hos-

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Lunatic  
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Licensed houses not within the immediate jurisdiction of the commissioners to be inspected four times a year at least by the visitors.

The proprietor or superintendent of every house and hospital to show every part and every patient to the visiting commissioners and visitors.

Inquiries to be made by the commissioners

(a) As to visitation of single patients, see 16 & 17 Vict. c. 96, s. 15, *post*, 718.

(b) The 25 & 26 Vict. c. 111, s. 29 (*post*, 732) enacts that every licensed house not within the immediate jurisdiction of the commissioners may

be visited at any time, and shall be visited twice at least in every year by one or more of the visitors, in addition to the visits required by this section. And all the powers and provisions in sects. 63 to 67 of this Act shall apply to a visitor visiting alone.

### 3. *Private Lunatic Asylums.*

and visitors on their several visitation (a).

pital, shall inquire when divine service is performed, and to what number of the patients, and the effect thereof; and also what occupations or amusements are provided for the patients, and the result thereof; and whether there has been adopted any system of non-coercion, and if so, the result thereof: and also as to the classification of patients; and also as to the condition of the pauper patients (if any) when first received; and also as to the dietary of the pauper patients (if any); and shall also make such other inquiries as to such visiting commissioners or visitors shall seem expedient; and every proprietor or superintendent of a licensed house or hospital who shall not give full and true answers to the best of his knowledge to all questions which the visiting commissioners and visitors respectively shall ask in reference to the matters aforesaid shall be guilty of a misdemeanour.

Books and documents to be produced to visiting commissioners and visitors.

Sect. 65. That upon every visit of the visiting commissioners to any licensed house or to any hospital, and upon every visit of the visitors to any licensed house, there shall be laid before such visiting commissioners or visitors (as the case may be), by the proprietor or superintendent of such licensed house or of such hospital, a list of all the patients then in such house or hospital (distinguishing pauper patients from other patients, and males from females, and specifying such as are deemed curable), also the several books by this Act required to be kept by the proprietor or superintendent and by the medical attendant of a licensed house or an hospital, and also all orders and certificates relating to patients admitted since the last visitation of the commissioners or visitors (as the case may be), and also, in the case of a licensed house, the licence then in force for such house, and also all such other orders, certificates, documents, and papers relating to any of the patients at any time received into such licensed house or hospital as the visiting commissioners or visitors shall from time to time require to be produced to them; and the said visiting commissioners or visitors, as the case may be, shall sign the said books as having been produced to them.

A book to be kept called 'The Visitors' Book,' for the result of inspection and inquiries;

Sect. 66. That there shall be hung up in some conspicuous part of every licensed house a copy of the plan given to the commissioners or justices on applying for the licence of such house; and that there shall be kept in every licensed house and in every hospital in which lunatics shall be received a Queen's printer's copy of this Act, bound up in a book to be called 'The Visitors' Book' (b), and that the said visiting commissioners and visitors respectively shall at the time of their respective visitations enter therein the result of the inspections and inquiries hereinbefore directed or authorized to be made by them respectively, with such observations (if any) as they shall think proper; and that there shall also be kept in every such house and hospital a book to be called 'The Patients' Book' (b), and that the said visiting commissioners and visitors respectively shall at the times of their respective visitations enter therein such observations as they may think fit respecting the state of mind or body of any patient in such house or hospital.

and a book called 'The Patients' Book,' for observations as to state of patients.

Proprietor or resident superintendent to transmit all entries by visitors and visiting commissioners to the clerk of the visitors and to the commissioners.

Sect. 67. That the proprietor or resident superintendent of every licensed house and of every hospital shall, within three days after every such visit by the visiting commissioners as aforesaid, transmit a true and perfect copy of the entries made by them in 'The Visitors' Book,' 'The Patients' Book,' and 'The Medical Visitation Book' respectively (b), (distinguishing the entries in the several books) to the com-

his care.

(a) By 25 & 26 Vict. c. 111, s. 35 (post, 733), the inquiries authorized to be made under this section may include inquiries as to moneys paid to the superintendent or proprietor on account of every lunatic under

(b) As to production of the books kept pursuant to this Act in actions for false imprisonment, etc., see note (a) to sect. 60, ante, 688.

missioners), and shall, within three days after every such visitation by the visitors, transmit a true and perfect copy of the entries made by them as aforesaid (distinguishing as aforesaid) to the commissioners and also to the clerk of the visitors (a); and the copies so transmitted to the clerk of the visitors of all such entries relating to any licensed house, and made since the grant or last renewal of the licence thereof shall be laid before the justices on taking into consideration the renewal of the licence to the house to which such entries shall relate; and every such proprietor or superintendent as aforesaid who shall omit to transmit, as hereinbefore directed, a true and perfect copy of every or any such entry as aforesaid, shall for every such omission forfeit a sum not exceeding ten pounds.

Sect. 68. That the commissioners visiting any house licensed by justices shall carefully consider and give special attention to the state of mind of any patient therein confined, as to the propriety of whose detention they shall doubt (or as to whose sanity their attention shall be specially called), and shall, if they shall think that the state of mind of such patient is doubtful, and that the propriety of his detention requires further consideration, make and sign a minute thereof in the patients' book of such house; and a true and perfect copy of every such minute shall, within two clear days after the same shall have been made, be sent by the proprietor or superintendent of such house to the clerk of the visitors of such house, and such clerk shall forthwith communicate the same to the said visitors, or some two of them (of whom a physician, surgeon, or apothecary shall be one), and such visitors shall thereupon immediately visit such patient and act as they shall see fit; and every such proprietor or superintendent who shall omit to send a true and perfect copy, as hereinbefore directed, of every or any such last-mentioned minute, and every clerk who shall neglect to communicate the same to two of the visitors aforesaid, shall be guilty of a misdemeanour.

Sect. 69. That the visiting commissioners shall after every visitation by them to every licensed house not being within their immediate jurisdiction, and to every hospital, report in writing the general result of their inspection thereof (together with such special circumstances, if any, as they may deem proper to notice), to the commissioners, and the secretary of the commissioners shall thereupon enter the same in a book to be kept for that purpose.

Sect. 70. That it shall be lawful for the commissioners or any five of them, at any quarterly or special meeting, by any resolution or resolutions under their common seal, or to be entered in a book to be kept for that purpose, and signed by five at least of the commissioners present at such meeting, from time to time to make such orders and rules as they shall think fit for regulating the duties of the commissioners or any of them, or of their secretary, clerks and servants, or for the due or better performance of the business of the commission: Provided nevertheless, that the secretary of the commissioners shall give to every commissioner, so far as circumstances will admit, not less than seven days' notice of every such special meeting, and shall in the summons for such special meeting state the purposes for which the same is intended to be held.

Sect. 71. That it shall be lawful for any two or more of the commissioners, or any two visitors, to visit and to inspect any licensed house or hospital at such hour of the night as they shall think fit: Provided nevertheless, that no such visitor shall make any such visitation or inspection except of a licensed house within their jurisdiction.

### 3. *Private Lunatic Asylums.*

Commissioners visiting a house licensed by justices to make an entry in the 'Patients' Book' as to the state of mind of any doubtful patient, and the same to be sent to the clerk of the visitors, who are thereupon to visit such patient.

Visiting commissioners to report on every house and hospital not within their immediate jurisdiction.

Power for the commissioners any five of them to make rules.

Power in certain cases to visit by night.

(a) By 25 & 26 Vict. c. 111, s. 36 (*post*, 733), it is provided that, in the case of licensed houses within the jurisdiction of visitors appointed by

justices, the proprietor shall also in like manner transmit copies of the entries made by the commissioners to the clerk of the visitors.

### 3. *Private Lunatic Asylums.*

The person who signed the order for the reception of a private patient may order his discharge or removal (c).

Provision for the discharge of a private patient when the person who signed the order for his reception is incapable (c).

Mode of removal or discharge of pauper patients.

No patient to be removed under any of the preceding powers, if certified to be dangerous, unless the commissioners or visitors consent, or for the purpose of transfer to some other asylum.

Sect. 72 (a). That if and when any person who signed the order on which any patient (not being a pauper) was received into any licensed house or into any hospital shall by writing under his hand direct that such patient shall be discharged or removed, then and in such case such patient shall forthwith be discharged or removed, as the person who signed the order for his reception shall direct (b).

Sect. 73 (a). That if the person who signed the order on which any patient (not being a pauper) was received into any licensed house or into any hospital be incapable by reason of insanity or absence from England, or otherwise, of giving an order for the discharge or removal of such patient, or if such person be dead, then and in any of such cases the husband or wife of such patient, or if there be no such husband or wife, the father of such patient, or if there be no father, the mother of such patient, or if there be no mother, then any one of the nearest of kin for the time being of such patient, or the person who made the last payment on account of such patient, may by any writing under his or her hand give such direction as aforesaid for the discharge or removal of such patient, and thereupon such patient shall be forthwith discharged or removed as the person giving such direction shall direct.

Sect. 74. That the guardians of any parish or union may by a minute of their board, or an officiating clergyman of any parish not under a board of guardians, and one of the overseers thereof, or any two justices of the county or borough in which such last-mentioned parish is situate, may by writing under the hands respectively of such clergyman and overseer or of such justices direct that any pauper patient belonging to such parish or union, and detained in any licensed house or any hospital, shall be discharged or removed therefrom, and may direct the mode of such discharge or removal; and if a copy of such minute or such writing be produced to the proprietor or superintendent of such licensed house or such hospital, he shall forthwith discharge or remove such patient, or cause or suffer such patient to be discharged or removed accordingly (d).

Sect. 75. Provided always, nevertheless, that no patient shall be discharged or removed, under any of the powers hereinbefore contained, from any licensed house or any hospital, if the physician, surgeon, or apothecary by whom the same shall be kept, or who shall be the regular medical attendant thereof, shall by writing under his hand certify that in his opinion such patient is dangerous and unfit to be at large, together with the grounds on which such opinion is founded, unless the commissioners visiting such house or the visitors of such house shall, after such certificate shall have been produced to them, give their consent in writing that such patient shall be discharged or removed: Provided that nothing herein contained shall prevent any patient from being transferred from any licensed house or any hospital to any other licensed house or any other hospital, or to any asylum, but in such case every such patient shall be placed under the control of an attendant belonging to the licensed house, hospital, or asylum to or from which he shall be about to

(a) By 16 & 17 Vict. c. 96, s. 17 (*post*, 718), the provisions of sects. 72 & 73 of this Act are extended to the discharge of single patients.

(b) By sect. 18 of 16 & 17 Vict. c. 96 (*post*, 719) the Lord Chancellor, upon the report of the commissioners, may order the discharge of a single patient.

By sect. 19 of the same Act, notice of the recovery of any patient is to be given as therein provided.

(c) If there be no person qualified, under these sections, to direct the discharge of a patient, the commissioners may order the discharge or removal of such patient, 25 & 26 Vict. c. 111, s. 43, *post*, 735.

See provisions of 16 & 17 Vict. c. 96, s. 20, *post*, 719, as to the transfer of private and single patients.

(d) As to notice to be given on the recovery of a pauper patient, see 16 & 17 Vict. c. 96, s. 19, *post*, 719.

be removed for the purpose of such removal, and shall remain under such control until such time as such removal shall be duly effected.

Sect. 76. That it shall be lawful for any two or more of the commissioners to make visits to any patient detained in any house licensed by the commissioners, on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made (seven days at least to intervene between such visits) it shall appear to such visiting commissioners that such patient is detained without sufficient cause, it shall be lawful for the commissioners, if they shall think fit, to make such order as to the commissioners shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

Sect. 77. That it shall be lawful for any two or more of the commissioners, of whom one shall be a physician and one a barrister, to make special visits to any patient detained in any house licensed by the justices or in any hospital, on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made, it shall appear to such visiting commissioners that such patient is detained without sufficient cause, they may make such order as to them shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

Sect. 78. That it shall be lawful for any two or more of the visitors of any licensed house, of whom one shall be a physician, surgeon, or apothecary, to make special visits to any patient detained in such house, on such days and at such hours as they shall think fit; and if after two distinct and separate visits so made, it shall appear to such visitors that such patient is detained without sufficient cause, they may make such order as to them shall seem meet for the discharge of such patient, and such patient shall be discharged accordingly.

Sect. 79. Provided always, that every such order by any commissioners or visitors for the discharge of a patient from any house licensed by justices, or from any hospital, shall be signed by them, and that each of such special visits shall be by the same commissioners or visitors; and that it shall not be lawful for such commissioners or visitors to order the discharge of any patient from any such last-mentioned house or hospital, without having previously, if the medical attendant of such house or hospital shall have tendered himself for that purpose, examined him as to his opinion respecting the fitness of such patient to be discharged; and if such commissioners or visitors shall after so examining such medical attendant discharge such patient, and such medical attendant shall furnish them with any statement in writing containing his reasons against the discharge of such patient, they shall forthwith transmit such statement to the commissioners or to the clerk of the visitors, as the case may require, to be kept and registered in a book for that purpose.

Sect. 80. Provided also, that not less than seven days shall intervene between the first and second of such special visits; and that such commissioners or visitors shall, seven days previously to the second of such special visits, give notice thereof, either by post or by an entry in the 'Patients' Book,' to the proprietor or superintendent of the house licensed by justices or of the hospital in which the patient intended to be visited is detained; and that such proprietor or superintendent shall forthwith, if possible, transmit by post a copy of such notice, in the case of a patient not being a pauper, to the person by whose authority such patient was received into such house, or by whom the last payment on account of such patient was made, and in the case of a pauper, to the guardians of his parish or union, or if there be no such guardian, to one of the overseers for the time being of his parish, and also in the case of any patient detained in a house licensed by justices, to the clerk of the visitors of such house.

### 3. *Private Lunatic Asylums.*

Commissioners may discharge any patient confined in a house licensed by themselves.

Two commissioners may make special visits to discharge any patient confined in a house licensed by justices or in an hospital.

Similar powers for two visitors as to houses within their jurisdiction.

Every order for the discharge of a patient under the last preceding powers to be signed by the persons exercising them, and to be subject to certain restrictions.

The last preceding powers to be exercised under certain other restrictions.

### 3. *Private Lunatic Asylums.*

Preceding powers not to extend to persons found lunatic by inquisition, or confined under authority of secretary of state.

Power of visitors and visiting commissioners to regulate the dietary of pauper patients.

Power for any visitor to give an order to the clerk of the visitors to search and give information.

Power for any commissioner to give an order to the secretary of the commissioners to search and give information whether any particular person is or has been within twelve months confined in any house or hospital.

Sect. 81. Provided always, nevertheless, that none of the powers of discharge hereinbefore contained shall extend to any person who shall have been found lunatic by inquisition or under any inquiry directed by the Lord Chancellor, in pursuance of the powers in that behalf herein-after (a) given to him, nor to any lunatic confined under any order or authority of her Majesty's principal secretary of state for the home department, or under the order of any Court of criminal jurisdiction.

Sect. 82. That it shall be lawful for the visitors of any licensed house at any time to determine and regulate the dietary of the pauper patients (b) therein; and that it shall be lawful for the visiting commissioners at any time to determine and regulate the dietary of the pauper patients in any licensed house or in any hospital; and that if such determination and regulation of any visitors and of the visiting commissioners shall not agree with each other, then the determination and regulation of the visiting commissioners shall be followed: Provided always, nevertheless, that every such regulation shall be made to take effect only from such time as not to affect any contract existing on the first day of June last for the maintenance of pauper patients before the first day of June, one thousand eight hundred and forty-six, or the expiration of such contract, whichever shall first happen.

Sect. 83. That if any person shall apply to any visitor in order to be informed whether any particular person is confined in any licensed house within the jurisdiction of such visitor, the said visitor, if he shall think it reasonable to permit such inquiry to be made, shall sign an order to the clerk of the visitors, and the said clerk shall, on receipt of such order, and on payment to him of a sum not exceeding seven shillings for his trouble, make search amongst the returns made to him in pursuance of this Act whether the person inquired after is or has been within the then last twelve calendar months confined in any licensed house within the jurisdiction of such visitor; and if it shall appear that such person is or has been so confined the said clerk shall deliver to the person so applying a statement in writing, specifying the situation of the house in which the person so inquired after appears to be or to have been confined, and of the name of the proprietor or resident superintendent thereof, and also the date of the admission of such person into such licensed house, and (in case of his having been removed or discharged) the date of his removal or discharge therefrom.

Sect. 84. That if any person shall apply to any commissioner in order to be informed whether any particular person is confined in any licensed house, or in any hospital, asylum or other place by this Act made subject to the visitation of the commissioners, such commissioner, if he shall think it reasonable to permit such inquiry to be made, shall sign an order to the secretary of the commissioners, and the secretary shall, on the receipt of such order, and on payment to him of a sum not exceeding seven shillings (to be applied as hereinbefore provided) (c), make search amongst the returns made in pursuance of this Act, or of any of the Acts hereby repealed, whether the person inquired after is or has been within the last twelve calendar months confined in any house, hospital, asylum or place by this Act made subject to the visitation of the commissioners; and if it shall appear that such person is or has been so confined the secretary shall deliver to the person so applying a statement in writing, specifying the situation of the house, hospital, asylum or place in which the person so inquired after appears to be or to have been confined, and also (so far as the said secretary can ascertain the same from any register

(a) This reference is to sect. 95 of 28, *post*, 721. And 25 & 26 Vict. c. this Act, *post*, 702; but see note (a) 111, s. 37, *post*, 734.

(b) See also 16 & 17 Vict. c. 96, s. 685.

(c) See sect. 33 of this Act, *ante*, 685.

or return in his possession) the name of the proprietor, superintendent or principal officer of such house, hospital, asylum or place, and also the date of the admission of such person into such licensed house, hospital, asylum, or other place, and (in case of his having been removed or discharged) the date of his removal or discharge therefrom.

Sect. 85. That it shall be lawful for any one of the commissioners, as to patients confined in any house, hospital, or other place (not being a gaol) hereby authorized to be visited by the commissioners, and also for any one of the visitors of any licensed house as to patients confined in such house at any time to give an order in writing under the hand of such one commissioner or visitor for the admission to any patient of any relation or friend of such patient (or of any medical or other person whom any relation or friend of such patient shall desire to be admitted to him), and such order of admission may be either for a single admission, or for an admission for any limited number of times, or for admission generally at all reasonable times, and either with or without any restriction as to such admission or admissions being in the presence of a keeper or not, or otherwise; and if the proprietor or superintendent of any such house, hospital, or place shall refuse admission to, or shall prevent or obstruct the admission to any patient of, any relation, friend, or other person who shall produce such order of admission as aforesaid, he shall for every such refusal, prevention, or obstruction, forfeit a sum not exceeding twenty pounds.

Sect. 86. That it shall be lawful for the proprietor or superintendent of any licensed house or of any hospital, with the consent (a) in writing of any two of the commissioners, or in the case of a house licensed by justices of any two of the visitors of such house, to send or take, under proper control, any patient to any specified place for any definite time for the benefit of his health: Provided always, nevertheless, that before any such consent as aforesaid shall be given by any commissioners or visitors the approval in writing of the person who signed the order for the reception of such patient, or by whom the past (c) payment on account of such patient was made, shall be produced to such commissioners or visitors, unless they shall, on cause being shown, dispense with the same (d).

Sect. 87. That in every case in which any patient shall, under any of the powers or provisions of this Act, be removed temporarily from the house or hospital into which the order for his reception was given, or be transferred from such house or hospital into any new house, and also in every case in which any patient shall escape from any house or hospital, and shall be retaken within fourteen days next after such escape, the certificate or certificates relating to and the original order for the reception of such patient shall respectively remain in force, in the same manner as the same would have done if such patient had not been so removed or transferred, or had not so escaped and been retaken.

Sect. 88. That the commissioners shall, at the expiration of every six calendar months, report to the Lord Chancellor the number of visits which they shall have made, the number of patients whom they shall have seen, and the number of miles which they shall have travelled

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Any one commissioner or visitor may give an order for the admission to any patient of any friend or relation, or any person named by a friend or relation.

Proprietor or superintendent with consent of two commissioners or visitors, may take or send a patient to any place for his health (b).

In the case of the removal of a patient, or of his escape and recapture within fourteen days, the original order for his reception to remain in force.

Commissioners to report to the Lord Chancellor periodically.

(a) Such consent may also be given by any two of the committee of management of a hospital (18 & 19 Vict. c. 105, s. 17, *post*, 729). And the consent given under this section, or the 18 & 19 Vict. c. 105, s. 17, may be from time to time renewed, and the place varied (*Ibid.*)

(b) See provisions of 25 & 26 Vict. c. 111, s. 38 (*post*, 734) permitting patients to be absent on trial.

(c) *Sic*, *quære* "last."

(d) See similar provisions as to single patients, 16 & 17 Vict. c. 96, s. 22, *post*, 720.



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during such months, and shall on the first day of January in each year make a return to the Lord Chancellor of all sums received by them for travelling expenses, or upon any other and what account, and shall also in the month of June (*a*) in every year make to the Lord Chancellor a report of the state and condition of the several houses, hospitals, asylums, and other places visited by them under this Act, and of the care of the patients therein, and of such other particulars as they shall think deserving of notice; and a true copy of such reports, showing the number of visits made, the number of patients seen, and the number of miles travelled, and also a copy of such return of sums received for travelling expenses, or on any other and what account, shall be laid before Parliament within twenty-one days next after the commencement of every session.

Sect. 89 is repealed by the 16 & 17 Vict. c. 96, s. 27; which see, *post*, 721.

No person (except a person deriving no profit, or a committee) to take charge of a single lunatic, except upon such order and medical certificates as aforesaid, and under certain obligations.

Sect. 90. That no person (unless he be a person who derives no profit from the charge, or a committee appointed by the Lord Chancellor) shall receive to board or lodge in any house, other than an hospital registered under this Act, or an asylum, or a house licensed under this Act, or under one of the Acts hereinbefore repealed, or take the care or charge of any one patient as a lunatic or alleged lunatic, without the like order and medical certificates in respect of such patient as are hereinbefore required (*b*) on the reception of a patient (not being a pauper) into a licensed house; and that every person (except a person deriving no profit from the charge, or a committee appointed by the Lord Chancellor), who shall receive to board or lodge in any licensed house, not being a registered hospital or an asylum, or take the care or charge of any one patient as a lunatic or alleged lunatic, shall, within seven clear days (*c*) after so receiving or taking such patient, transmit to the secretary of the commissioners a true and perfect copy of the order and medical certificates on which such patient has been so received, and a statement of the date of such reception, and of the situation of the house into which such patient has been received, and of the Christian and surname and occupation of the occupier thereof and of the person by whom the care and charge of such patient has been taken (*d*); and every such patient shall at least once in every two weeks (*e*) be visited by a physician, surgeon, or apothecary not deriving, and not having a partner, father, son, or brother who derives, any profit from the care or charge of such patient; and such physician, surgeon, or apothecary shall enter in a book, to be kept at the house or hospital for that purpose, to be called 'The Medical Visitation

(*a*) This report must now be made on or before the month of *March* in each year, and must be made up to the end of the preceding year, 16 & 17 Vict. c. 96, s. 32, *post*, 722.

(*b*) This section is amended by 16 & 17 Vict. c. 96, ss. 4 & 8, *post*, 714-716; see also sect. 11 of same Act, *post*, 717.

In the case of lunatics so found by inquisition, an order signed by the committee appointed by the Lord Chancellor is sufficient; see 25 & 26 Vict. c. 111, s. 22, *post*, 731.

(*c*) The time within which these documents must be transmitted to the commissioners is altered by 25 &

26 Vict. c. 111, s. 28; which see, *post*, 732.

(*d*) A statement of the condition of the patient, in the form given in schedule (B.) to the 25 & 26 Vict. c. 111 (see *ante*, 676), must be transmitted to the commissioners within the same period (25 & 26 Vict. c. 111, s. 41, *post*, 735).

(*e*) This provision does not apply to lunatics so found by inquisition; see 25 & 26 Vict. c. 111, s. 22, *post*, 731.

The commissioners may, upon certain conditions, permit the medical visitation to be made less frequently than here provided, if they think fit, 16 & 17 Vict. c. 96, s. 14, *post*, 718.

Book' (a), the date of each of his visits, and a statement of the condition of the patient's health, both mental and bodily (b), and of the condition of the house in which such patient is, and such book shall be produced to the visiting commissioner on every visit, and shall be signed by him as having been so produced; and the person by whom the care or charge of such patient has been taken, or into whose house he has been received as aforesaid, shall transmit to the secretary of the commissioners the same notices and statements of the death, removal, escape and recapture of such lunatic, and within the same periods, as are hereinbefore (c) required in the case of the death, removal, escape and recapture of a patient (not being a pauper) received into a licensed house; and that every person who shall receive into an unlicensed house, not being a registered hospital nor an asylum, or take the care or charge of any person therein as a lunatic, without first having such order and medical certificates as aforesaid, or who, having received any such patient, shall not within the several periods aforesaid transmit to the secretary of the commissioners such copy, statement, and notices as aforesaid, or shall fail to cause such patient to be so visited by a medical attendant as aforesaid, and every such medical attendant who shall make an untrue entry in the said medical visitation book, shall be guilty of a misdemeanour.

Sect. 91. That the secretary to the commissioners shall preserve every copy transmitted as aforesaid of the order and certificates for the reception of any patient as a lunatic into an unlicensed house, and every statement and notice which may be transmitted to such secretary with respect to any such patient as aforesaid, and shall enter the same (in such form as the private committee shall direct) in a book to be kept for that purpose, to be called 'The Private Register,' and such private register shall be kept by such secretary in his own custody, and shall be inspected only by the members for the time being of the said private committee, and by such other persons as the Lord Chancellor shall by writing under his hand appoint.

Sect. 92. That it shall be lawful for any one member of the said private committee (d), on the direction of such committee, or of any two members thereof (of whom the one member aforesaid may be one), at all reasonable times to visit every or any unlicensed house in which one patient only is received as a lunatic (unless such patient be so received by a person deriving no profit from the charge, or by a committee appointed by the Lord Chancellor), and to inquire (e) and report to the said private committee on the treatment and state of health, both bodily and mental, of such patient; and a copy of every or any such report shall be entered in a private register, to be kept for that purpose by the secretary of the commissioners, and another copy thereof shall, if such private committee think it expedient, be laid before the Lord Chancellor.

Sect. 93. That it shall be lawful for the Lord Chancellor, on the representation of the said private committee (d), accompanied with a copy of

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Copy of the order and certificates, etc., with respect to lunatics received into an unlicensed house to be entered in a private register.

Members of the private committee to visit unlicensed houses receiving a single patient, and report.

The Lord Chancellor on such report and the

(a) The commissioners are empowered, by 25 & 26 Vict. c. 111, s. 42, *post*, 735, to make regulations as to the form of this book.

(b) An annual report of the condition of every single patient must also be made by the medical man visiting or having such patient in charge (16 & 17 Vict. c. 96, s. 16, *post*, 718). And the commissioners may also require additional reports. (*Ibid.*)

(c) See sects. 53, 54, 55 of this Act, *ante*, 689, 690.

(d) By 16 & 17 Vict. c. 96, s. 27 (*post*, 721), the powers hereby given to the private committee are vested in the commissioners.

(e) By 25 & 26 Vict. c. 111, s. 35 (*post*, 733), the inquiries authorized to be made under this section may include inquiries as to moneys paid to the superintendent or proprietor on account of any lunatic under his care.

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representation of the private committee may order a lunatic to be removed.

Commissioners to report if property of lunatics be not duly protected or applied.

The Lord Chancellor to direct the master in lunacy to report as to the lunacy of any person detained as a lunatic, and to appoint guardians of his person and estate, and direct the application of his income.

Masters in lunacy to have all necessary powers of

a report made as last aforesaid as to any patient received or detained as a lunatic in an unlicensed house as aforesaid, to make an order that such patient shall be removed from such house, and from the care and charge of the person under whose care and charge such lunatic may be; and any person detaining such lunatic in such house, or in such care or charge, for the space of three days after a copy of such order shall have been left at such house or served on such person, shall be guilty of a misdemeanour.

Sect. 94. That whenever the commissioners shall have reason to suppose that the property of any person detained or taken charge of as a lunatic is not duly protected or that the income thereof is not duly applied for his maintenance, such commissioners shall make such inquiries relative thereto as they shall think proper, and report thereon to the Lord Chancellor (*a*).

Sect. 95 (*b*). That when any person shall have been received or taken charge of as a lunatic upon an order and certificates, or an order and certificate, in pursuance of the provisions of this Act, or of any Act hereinbefore repealed, and shall either have been detained as a lunatic for the twelve months then last past, or shall have been the subject of a report by the commissioners in pursuance of the provision lastly hereinbefore contained, it shall be lawful for the Lord Chancellor to direct that one of the said masters in lunacy shall, and thereupon one of the said masters shall personally examine such person, and shall take such evidence and call for such information as to such master shall seem necessary to satisfy him whether such person is a lunatic, and shall report thereon to the Lord Chancellor, and such report shall be filed with the secretary of lunatics; and it shall be lawful for the Lord Chancellor from time to time to make orders for the appointment of a guardian, or otherwise for the protection, care and management of the person of any person who shall by any such report as last aforesaid be found to be a lunatic, and such guardian shall have the same powers and authorities as a committee of the person of a lunatic found such by inquisition now has, and also to make orders for the appointment of a receiver, or otherwise for the protection, care, and management of the estate of such lunatic, and such receiver shall have the same powers and authorities as a receiver of the estate of a lunatic found such by inquisition now has, and also to make orders for the application of the income of such lunatic, or a sufficient part thereof, for his maintenance and support, and in payment of the costs, charges and expenses attending the protection, care, and management of the person and estate of such lunatic, and also as to the investment or other application for the purpose of accumulation of the overplus, if any, of such income for the use of such lunatic, as to the Lord Chancellor shall from time to time in each case seem fit: Provided always, that such protection, care, and management shall continue only during such time as such lunatic shall continue to be detained as a lunatic upon an order and certificates or certificate as aforesaid, and for such further time, not exceeding six months, as the Lord Chancellor may fix: Provided also, that it shall be lawful for the Lord Chancellor in any such case, either before or after directing such inquiry by such master as aforesaid, and whether such master shall have made a report as aforesaid or not, to direct a commission in the nature of a writ *de lunatico inquirendo* to issue, to inquire of the lunacy of such person.

Sect. 96 (*c*). That such masters shall have power, in the prosecution of all inquiries and matters which may be referred to them as aforesaid

(*a*) See also 16 & 17 Vict. c. 96, s. 23, *post*, 720.

(*b*) By 16 & 17 Vict. c. 70, s. 53,

proceedings under this section are to be discontinued.

(*c*) See note to last section, *supra*.

or otherwise under this Act, to summon persons before them, and to administer oaths and take evidence, either *viva voce* or on affidavit, and to require the production of books, papers, accounts, and documents; and that the Lord Chancellor may by any order (either general or particular) refer to the said masters any inquiries under the provisions of this Act relating to the person and estate of any lunatic as to whom a report shall be made by a master as aforesaid, in like manner as inquiries relating to the persons and estates of lunatics found such by inquiry are now referred to them.

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inquiry, and to make inquiries referred to them.

Sect. 97. That it shall be lawful for the Lord Chancellor from time to time to make such orders as shall to him seem fit for regulating the form and mode of proceeding before the Lord Chancellor and before the said masters, and of any other proceedings pursuant to the provisions of this Act, for the due protection, care, and management of the persons and estates of lunatics as to whom such reports shall be made by the said masters as aforesaid, and also for fixing, altering, and discontinuing the fees to be received and taken in respect of such proceedings, as to the Lord Chancellor shall from time to time seem fit: Provided, nevertheless, that all fees to be so received and taken shall be paid into the Bank of England, and placed to the credit of the Accountant-General of the Court of Chancery, to the account intituled "The Suitors' Fee Fund Account" in like manner as and together with the fees payable under the Act passed in the fifth and sixth years of her present Majesty, intituled "An Act to alter and amend the Practice and Course of Proceeding under Commissions in the nature of Writ De Lunatico Inquirendo," and be applied in like manner as such last-mentioned fees.

Lord Chancellor to make orders (a) and regulations, and fix fees.

5 & 6 Vict. c. 84.

Sect. 98. That the travelling and other expenses of the said masters and their clerks shall be paid to them, by virtue of any order or orders of the Court of Chancery, out of the said fund, intituled "The Suitors' Fee Fund Account," in the same manner as their expenses under the said last-mentioned Act.

Masters' expenses how to be paid.

Sect. 99. That every proprietor and superintendent of a licensed house or registered hospital, and every other person (b) hereby or by any of the Acts hereinbefore repealed, authorized to receive or take charge of a lunatic upon an order, and who shall receive or has received a proper order, in pursuance of this Act or any of the said repealed Acts, accompanied with the required medical certificates or certificate, for the reception or taking charge of any person as a lunatic, and the assistants and servants of such proprietor, superintendent, or other person shall have power and authority to take charge of, receive, and detain such patient until he shall die or be removed or discharged by due authority, and in case of the escape at any time or times of such patient to retake him at any time within fourteen days after such escape, and again to detain him as aforesaid; and in every writ, indictment, information, action, and other proceeding which shall be preferred or brought against any such proprietor, superintendent, or other person authorized as aforesaid, or against any assistant or servant of any such proprietor, superintendent, or authorized person for taking, confining, detaining, or retaking any person as a lunatic, the party complained of may plead such order and certificates or certificate in defence to any such writ, indictment, information, action, or other proceeding as aforesaid, and such order and certificates or certificate shall, as respects such party, be a justification for

Proprietors, superintendents, and other authorized persons, may plead the order and certificates for receiving any lunatic in bar of all proceedings at law.

(a) The orders made by Lord Lyndhurst, under this Act, will be found 8 Beav. 11-14.

(b) This section will not protect others than those of the description named, and such other persons would

only be justified, at common law, if the person detained was in fact a lunatic. (*Fletcher v. Fletcher*, 1 Ell. & Ell. 420; 28 L. J., Q. B. 134; and see *Scott v. Wakem*, 3 F. & F. 328; *Synn v. Fraser*, 3 F. & F. 859.)

### 3. *Private Lunatic Asylums.*

Commissioners and visitors may summon witnesses to give evidence, with a penalty for non-compliance.

Provision for the payment of witnesses' expenses.

Upon complaint made of any offence against this Act, justices to require the

taking, confining, detaining, or retaking such lunatic or alleged lunatic (a).

Sect. 100. That it shall be lawful for the commissioners, or any two of them, and also for the visitors of any licensed house, or any two of such visitors, from time to time, as they shall see occasion, to require, by summons under the common seal of the commission, if by the commissioners, and if by two only of the commissioners or by two visitors, then under the hands and seals (b) of such two commissioners or two visitors, as the case may be (according to the form in schedule (I.) annexed to this Act, or as near thereto as the case will permit), any person to appear before them to testify on oath (c) the truth touching any matters respecting which such commissioners and visitors respectively are by this Act authorized to inquire (which oath such commissioners or visitors are hereby empowered to administer); and every person who shall not appear before such commissioners or visitors pursuant to such summons, or shall not assign some reasonable excuse for not so appearing, or shall appear and refuse to be sworn or examined, shall, on being convicted thereof before one of her Majesty's justices for the county or borough within which the place at which such person shall have been by such summons required to appear and give evidence is situate, shall for every such neglect or refusal forfeit a sum not exceeding fifty pounds.

Sect. 101. That it shall be lawful for any commissioners or visitors who shall summon any person to appear and give evidence as aforesaid to direct the secretary of the commissioners or the clerk of such visitors, as the case may be, to pay to such persons all reasonable expenses of his appearance and attendance in pursuance of such summons, the same to be considered as expenses incurred by such commissioners and visitors respectively in the execution of this Act, and to be taken into account and paid accordingly.

Sect. 102. That every complaint or information of or for any offence against this Act, where any pecuniary penalty is hereby imposed (except when hereby otherwise provided for), may be made before one justice; and when any person shall be charged upon oath before a justice for any

(a) Under this section the proper order and certificates are a sufficient justification to the keeper of a licensed house without putting him to the trouble and expense of making out the facts certified.

In an action for trespass, for assaulting, etc., and carrying away E., then and still being the wife of the plaintiff, and detaining her against her will, etc., the defendant pleaded, under this statute, that he was a proprietor of a house duly licensed under this Act, and that he received an order, in pursuance of this Act, for the reception of the said E. as a lunatic (the order, which was set out in the plea, described the patient as E. D., a person of insane mind); that the order was accompanied by two medical certificates, stating the said E. D. to be a person of unsound mind; that the defendant then, as such proprietor, took charge of, and received into the house, the said E., and detained her until her escape;

and that the defendant, within fourteen days after her escape, gently laid his hands upon her, and re-took her, and carried her away to the said house, and there detained her, as he lawfully might, which are the said trespasses, etc.; it was held that the order and certificates afforded a good justification to the defendant, although the person named in them was in fact not insane. (*Norris v. Seed*, 3 Exch. 782.)

It seems that in such case, where the wife is really not insane, the husband's remedy is by *habeas corpus*, or by application to the commissioners. (*Ibid.*)

(b) Sealing is now dispensed with, 18 & 19 Vict. c. 105, s. 15, *post*, 728.

(c) The commissioners or visitors may also examine on oath any person appearing before them as a witness, notwithstanding a summons may not have been served on him in pursuance of this section, 25 & 26 Vict. c. 111, s. 46, *post*, 736.

such offence against this Act, such justice may summon the person charged to appear at a time and place to be named in such summons, and if he shall not appear accordingly, and upon proof of the due service of the summons (either personally or by leaving the same at his last or usual place of abode) any two justices may either proceed to hear and determine the case, or may issue their warrant for apprehending such person, and bringing him before any two justices; and any two justices shall and may, upon the appearing of such person pursuant to such summons, or upon such person being apprehended with such warrant, or upon the non-appearance of such person, hear the matter of every such complaint or information, and make any such determination thereon as such justices shall think proper; and upon conviction of any person such justices may, if they shall think fit, reduce the amount of the penalty by this Act imposed for such offence to any sum not less than one-fourth of the amount thereof, and shall and may issue a warrant under their hands and seals for levying such penalty or reduced penalty, and all costs and charges of such summons, warrant, and hearing, and all incidental costs and charges, by distress and sale of the goods and chattels of the person so convicted; and it shall be lawful for any such two justices to order any person so convicted to be detained and kept in the custody of any constable or other peace officer until return can be conveniently made to such warrant of distress, unless the said offender shall give security, to the satisfaction of such justices, by way of recognizance or otherwise, for his appearance before such justices on such day as shall be appointed for the return of such warrant of distress, such day not being more than seven days from the time of taking any such security; but if upon the return of such warrant of distress it shall appear that no sufficient distress can be had whereupon to levy the said penalty, and such costs and charges as aforesaid, and the same shall not be forthwith paid, or in case it shall appear to the satisfaction of such justices, either by the confession of the offender or otherwise, that the offender hath not sufficient goods and chattels whereupon the said penalty, costs, and charges may be levied, such justices shall and may, by warrant under their hands and seals, commit such offender to the common gaol or house of correction for any term not exceeding three calendar months, unless such penalty, and all such costs and charges as aforesaid, shall be sooner paid; and all such penalties, when recovered, shall be paid, when the complaint or information shall be laid or brought by or by the direction of the commissioners, to the secretary of the commissioners, to be by him applied and accounted for as hereinbefore directed with respect to moneys received for licences granted by the commissioners, and when the complaint or information shall be laid or brought by the direction of any visitors, to the clerk of the peace for the county or borough, to be by him applied and accounted for as hereinbefore directed with respect to moneys received for licences granted by the justices of such county or borough; and the overplus (if any) arising from such distress and sale, after payment of the penalty, and all costs and charges as aforesaid, shall be paid, upon demand, to the owner of the goods and chattels so distrained.

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attendance of the person charged, and adjudicate thereon.

Recovery of penalties, and application thereof.

Sect. 103. That the justices before whom any person shall be convicted of any offence against this Act for which a pecuniary penalty is imposed may cause the conviction to be drawn up in the following form, or in any other form to the same effect, as the case may require; and that no conviction under this Act shall be void through want of form:—

Form of conviction before justices.

*Be it remembered, that on the*                      *day of*                      *, in the year of our Lord*  
*, at*                      *, in the county [or borough] of*                      *, A. B. was con-*  
*victed before us,*                      *of her Majesty's justices of the peace for the said county*  
*[or borough], for that he the said*                      *did*                      *, and we the said*  
*adjudge the said*                      *for his offence to pay the sum of*                      *.*

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Appeal to quarter sessions.

Sect. 104. Provided always, that any person who shall think himself aggrieved by any order or determination of any justices under this Act may, within four calendar months after such order made or given, appeal to the justices at general or quarter sessions, the person appealing having first given at least fourteen clear days' notice in writing of such appeal, and the nature and matter thereof, to the person appealed against, and forthwith after such notice entering into a recognizance before some justice, with two sufficient sureties, conditioned to try such appeal, and to abide the order and award of the said court thereupon; and the said justices at general or quarter sessions, upon the proof of such notice and recognizance having been given and entered into, shall in a summary way hear and determine such appeal, or if they think proper adjourn the hearing thereof until the next general or quarter sessions, and, if they see cause, may mitigate any penalty to not less than one-fourth of the amount imposed by this Act, and may order any money to be returned which shall have been levied in pursuance of such order or determination, and shall and may also award such further satisfaction to be made to the party injured, or such costs to either of the parties, as they shall judge reasonable and proper; and all such determinations of the said justices at general or quarter sessions shall be final, binding, and conclusive upon all parties to all intents and purposes whatsoever.

Actions to be commenced within six calendar months.

Act may be given in evidence.

Sect. 105. That if any action or suit shall be brought against any person for anything done in pursuance of this Act or of any of the Acts hereby repealed, the same shall be commenced within twelve calendar months next after the release of the party bringing the action, and shall be laid or brought in the county or borough where the cause of action shall have arisen, and not elsewhere; and the defendant in every such action or suit may, at his election, plead specially or the general issue not guilty, and give this Act and the special matter in evidence at any trial to be had thereupon, and that the same was done in pursuance and by the authority of this Act; and if the same shall appear to be so done, or that such action or suit shall be brought in any other county or borough than as aforesaid, or shall not have been commenced within the time before limited for bringing the same, then the jury shall find a verdict for the defendant; and upon a verdict being so found, or if the plaintiff shall be nonsuited, or discontinue his action or suit after the defendant shall have appeared, or if upon demurrer judgment shall be given against the plaintiff, then the defendant shall recover double costs, and have such remedy for recovering the same as any defendant hath or may have in any other cases by law.

Offenders to be prosecuted, and penalties sued for by the secretary of the commissioners and the clerk of any visitors, and by no person without the authority of the commissioners or visitors.

Sect. 106. That it shall be lawful for the secretary of the commissioners, on their order, to prosecute any person for any offence against the provisions of this Act, and to sue for and recover any penalty to which any person is made liable by this Act; and all penalties sued for and recovered by such secretary shall be paid to him, and be by him applied and accounted for as hereinbefore directed with respect to moneys received for licences granted by the commissioners (a); and that it shall be lawful for the clerk of any visitors, on their order, to prosecute any person for any offence against the provisions of this Act committed within the jurisdiction of such visitors, and to sue for and recover any penalty to which any person within the jurisdiction of such visitors is made liable by this Act; and all penalties sued for and recovered by any such clerk shall be paid to him, and be by him paid to the clerk of the peace for such county or borough, and be by such clerk of the peace applied and accounted for as hereinbefore directed with respect to moneys received for licences by such clerk of the peace (b); and it shall

(a) See sect. 33 of this Act, *ante*, 685.

(b) See sect. 36 of this Act, *ante*, 686.

not be lawful for any one to prosecute any person for any offence against the provisions of this Act, or to sue for any penalty to which any person is made liable by this Act, except by order of the commissioners or of visitors having jurisdiction in the place where the cause of prosecution has arisen or the penalty been incurred, or with the consent of her Majesty's attorney-general or solicitor-general for England for the time being.

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Sect. 107. That, notwithstanding the repeal of the several Acts heretofore repealed, every offence heretofore committed against any of the provisions of any of the same Acts may be prosecuted, and every penalty heretofore incurred by any person for any offence against the provisions of any of the same Acts may be sued for and recovered, by the secretary of the commissioners, in the same manner and with all the same powers and rights as if such offence had been committed or such penalty incurred for an offence against the provisions of this Act; and every penalty so recovered shall be applied in the same manner as a penalty recovered for an offence against the provisions of this Act,

Offenders against the provisions of any of the repealed Acts may be prosecuted under this Act.

Sect. 108. That when any person shall be proceeded against, under the provisions of this Act, for omitting to transmit or send any copy, list, notice, statement, or other document heretofore required to be transmitted or sent by such person, and such person shall prove by the testimony of one witness upon oath that the copy, list, notice, statement, or document in respect of which such proceeding is taken was put into the post in due time, or (in case of documents required to be transmitted or sent to the commissioners or a clerk of the peace) left at the office of the commissioners or of the clerk of the peace, and shall have been properly addressed, such proof shall be a bar to all further proceeding in respect of such omission.

No person to be punishable for omitting to send any copy, etc., if proved to have been put in the post or left at the proper office.

Sect. 109. That the costs, charges, and expenses incurred by or under the authority or order of the commissioners in proceedings under this Act shall be paid by the secretary of the commissioners, and included by him in the account of receipts and payments heretofore (a) directed to be kept by him; and that the costs, charges, and expenses incurred by or under the order of any visitors in proceedings under this Act shall be paid by the clerk of the peace of their county or borough, and included by him in the account of receipts and payments heretofore (b) directed to be kept by him.

Costs incurred by the commissioners to be paid by their secretary, and costs incurred by visitors by the clerk of the peace.

Sect. 110. That two or more of the commissioners (c), one at least of whom shall be a physician or surgeon, and one at least a barrister, shall and may, once or oftener in each year, on such day or days, and at such hours of the day, and for such length of time as they shall think fit, visit every asylum for lunatics, and every gaol in which there shall be or alleged to be any lunatic, and shall inquire whether the provisions of the law have been carried out as to the construction of each asylum visited, and as to its visitation and management, and also as to the regularity of the admissions and discharges of patients therein and therefrom, and whether divine service is performed therein, and whether any system of coercion is in practice therein, and the result thereof; and as to the classification or non-classification of patients therein, and the number of attendants on each class; and as to occupations and amuse-

Commissioners to visit asylums and gaols.

(a) See sect. 34 of this Act, *ante*, 685.

(b) See sect. 37 of this Act, *ante*, 686.

(c) A single commissioner may at any time visit asylums and gaols, in

addition to the visits required by this section; and every commissioner so visiting alone shall have the same powers as two commissioners would have under this section, 25 & 26 Vict. c. 111, s. 30, *post*, 733.



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ments of the patients, and the effects thereof; and as to the condition, as well mental as bodily, of the pauper patients when first received; and also as to the dietary of the pauper patients; and shall also make such other inquiries as to every or any such asylum, and all such inquiries as to the lunatics in any gaol, as to such visiting commissioners shall seem meet.

Sect. 111 is repealed by 16 & 17 Vict. c. 96, s. 28 (*post*, 721), and provisions are made in lieu thereof.

Provision for the visitation of lunatics under the care of committees, and also of state and criminal lunatics, and other lunatics not comprised in the preceding provisions (*b*).

Sect. 112. That it shall be lawful for the Lord Chancellor, in the case of any lunatic under the care of a committee appointed by the Lord Chancellor, and for the Lord Chancellor or her Majesty's principal secretary of state for the home department, in the case of any lunatic under the care of any person receiving or taking the charge of such one lunatic only, and deriving no profit from the charge, and in the case of any person confined as a State lunatic, or as a lunatic under the order of any criminal court of justice (*a*), and in the case of every other person detained or taken charge of as a lunatic, or represented to be a lunatic, or to be under any restraint as a lunatic, at any time, by an order in writing under the hand of the Lord Chancellor, or the said secretary of state, as the case may be, directed to the commissioners or any of them, or to any other person, to require the persons or person to whom such order shall be directed, or any of them, to visit and examine such lunatic or supposed lunatic, and to make a report to the Lord Chancellor, or to her Majesty's principal secretary of state for the home department, of such matters as in such order shall be directed to be inquired into.

Power for the Lord Chancellor and Secretary of State for the Home Department to authorize a special visitation of any place where a lunatic is represented to be confined (*b*).

Sect. 113. That it shall be lawful for the Lord Chancellor or her Majesty's principal secretary of state for the home department to employ any commissioner appointed under this Act, or other person, to inspect or inquire into the state of any asylum, hospital, gaol, house, or place (*c*) wherein any lunatic, or person represented to be lunatic, shall be confined or alleged to be confined, and to report to him the result of such inspection and inquiry; and every such person so employed, and not being a commissioner, may be paid such sum of money for his attendance and trouble as to the Lord Chancellor or her Majesty's principal secretary of state for the home department shall seem reasonable; and every such person so employed, whether a commissioner or not, shall be allowed his reasonable travelling or other expenses while so employed; and such sum of money for attendance and trouble, and such expenses, shall be charged on and shall be paid out of the contingency fund of the Home Office (*d*).

Interpretation clause (*e*).

Sect. 114. That in this Act and the schedules thereto the words and expressions following shall have the several meanings hereby assigned to them, unless there shall be something in the subject or context repugnant to such construction (that is to say);

"Borough" shall mean every borough, town and city corporate having a separate quarter sessions, recorder, and clerk of the peace:

(*a*) As to criminal lunatics, see *ante* (tit. "*Criminal Lunatics*"), 581.

(*b*) For the penalty on persons obstructing orders made under these sections or by the commissioners, see 16 & 17 Vict. c. 96, s. 34, *post*, 722.

(*c*) As to the special visitation of a lunatic in any workhouse, by order of the secretary of state, see 25 & 26 Vict. c. 111, s. 31, *post*, 733.

(*d*) By the 16 & 17 Vict. c. 96, s. 33, *post*, 722, the provisions in sect. 113 of this Act as to payment of persons employed to inspect, etc., are extended to persons visiting under sect. 112 of this Act.

(*e*) See also the interpretation clause in 16 & 17 Vict. c. 96, s. 36, *post*, 723.

"County" shall mean every county, riding, division of a county, county of a city, county of a town, liberty and other place having a separate commission of the peace, and not being a "borough" within the meaning aforesaid :

"The Lord Chancellor" shall mean the lord high chancellor, the lord keeper or commissioners of the great seal of Great Britain, and other the person or persons for the time being entrusted, by virtue of the Queen's sign-manual, with the care and commitment of the custody of the persons and estates of persons found idiot, lunatic, or of unsound mind :

"Barrister" shall mean a barrister and a serjeant-at-law : and a serjeant-at-law who shall have been called to the bar five years or more before his appointment to be a commissioner shall be considered as a barrister of five years' standing :

"Lunatic" shall mean every insane person, and every person being an idiot, or lunatic or of unsound mind :

"Parish" shall mean any parish, township, hamlet, vill, tithing, extra-parochial place, or place maintaining its own poor :

"Officiating clergyman of a [*or the*] parish" shall mean a clergyman regularly officiating and acting as the minister or one of the ministers of a parish, chapelry, or ecclesiastical district :

"Borough rate" shall mean a borough rate, and any funds assessed upon or raised in or belonging to any borough in the nature of a borough rate, and applicable to the purposes to which borough rates are applicable :

"County rate" shall mean a county rate, and any funds assessed upon or raised in or belonging to any county in the nature of a county rate, and applicable to the purposes to which county rates are applicable :

"Pauper" shall mean every person maintained wholly or in part at the expense of any parish, union, county, or borough :

"Patient" shall mean every person received or detained as a lunatic, or taken care or charge of as a lunatic :

"Private patient" shall mean every patient who is not a pauper :

"Proprietor" shall mean every person to whom any licence has been granted under the provisions of any Act hereby repealed, or shall be granted under the provisions of this Act, and every person keeping, owning, having any interest or exercising any duties or powers of a proprietor in any licensed house :

"Clerk of the peace" shall mean every clerk of the peace and person acting as such, and every deputy duly appointed :

"Medical attendant" shall mean every physician, surgeon, and apothecary who shall keep any licensed house, or shall in his medical capacity attend any licensed house, or any asylum, hospital, or other place where any lunatic shall be confined :

"Justice" shall mean a justice of the peace :

"Asylum" shall mean any lunatic asylum already erected and established under the 48 Geo. 3, c. 96, or erected and established, or hereafter to be erected and established, under or which have been made subject or liable to any of the provisions of 9 Geo. 4, c. 40, or hereafter to be erected and established under the provisions of any Act for the erection or regulation of county or borough lunatic asylums :

"Hospital" shall mean any hospital or part of an hospital or other house or institution (not being an asylum) wherein lunatics are received, and supported wholly or partly by voluntary contributions

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or by any charitable bequest or gift, or by applying the excess of payments of some patients for or towards the support, provision, or benefit of other patients :

"Licensed house" shall mean a house licensed under the provisions of this Act, or of some Act hereby repealed, for the reception of lunatics :

"Oath" shall mean an oath, and every affirmation or other declaration or solemnity lawfully substituted for an "oath" in the case of Quakers or other persons exempted by law from the necessity of taking an oath :

Words importing the singular number shall include the plural number, and words importing the plural number shall include the singular number, and words importing the masculine gender shall include females.

Imbecility and loss of mental power, whether arising from natural decay, or from paralysis, softening of the brain, or other natural cause, and although unaccompanied by frenzy or delusion of any kind, constitute unsoundness of mind amounting to lunacy within this statute. (*Reg. v. Shaw, Law Rep. 1 C. C. R. 145.*)

Boroughs and counties to comprise all places therein not having separate commission of the peace.

Sect. 115. That for the purposes of this Act every borough and county shall include every place situate within the limits of such borough or county, and not having a separate commission of the peace; and for the purposes of this Act every place situate within the limits of any borough or county, and not having a separate commission of the peace, shall be within the jurisdiction of the justices of such borough or county; and that the justices of every borough shall, for the purposes of this Act, assemble in special sessions at such times as the quarter sessions for such borough shall be holden; and that all the acts hereinbefore required to be done by the justices of counties in general or quarter sessions assembled may be done by the justices of boroughs at such special sessions.

Sect. 116 is repealed by the 16 & 17 Vict. c. 96, sect. 35, *post*, 723.

Act to be confined to England and Wales.

Sect. 117. That this Act shall extend only to England and Wales.

## SCHEDULES.

### SCHEDULE (A.) Section 30.

#### *Form of Licence (a).*

*Know all men, that we, the commissioners in lunacy [or we the undersigned justices of the peace, acting in and for in general [or quarter or special] sessions assembled], do hereby certify that A. B., of in the parish of , in the county of , hath delivered to*

(a) By 25 & 26 Vict. c. 111, s. 14, *post*, 723, where a licence is granted after the passing of that Act to a house not previously licensed, such licence must be in the form given in

schedule (A.) to that Act, which see *post*, 736.

As to penalties for infringing the terms of the licence, see 25 & 26 Vict. c. 111, s. 17, *post*, 731.

us [or the clerk of the peace] a plan and description of a house and premises proposed to be licensed for the reception of lunatics, situate at \_\_\_\_\_, in the county of \_\_\_\_\_ [or, in the case of a renewed licence, hath delivered to us [or the clerk of the peace] a list of the number of patients now detained in a house and premises licensed on the \_\_\_\_\_ day of \_\_\_\_\_ last, for the reception of lunatics, situate at \_\_\_\_\_, in the county of \_\_\_\_\_], and we, having considered and approved the same, do hereby authorize and empower the said A. B. (he intending [or not intending] to reside therein) to use and employ the said house and premises for the reception of \_\_\_\_\_ male [or female, or \_\_\_\_\_ male and \_\_\_\_\_ female] lunatics, of whom not more than \_\_\_\_\_ shall be private patients, for the space of \_\_\_\_\_ calendar months from this date.

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Sealed with our common seal [or given under our hands and seals], this day of \_\_\_\_\_, in the year of our Lord 18 \_\_\_\_\_.

Witness,

Y. Z., Secretary to the commissioners of lunacy  
[or clerk of the peace].

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SCHEDULE (B.) Section 45.

*Order for the Reception of a Private Patient (a).*

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SCHEDULE (C.) Section 45.

*Form of Medical Certificate in the Case of Private Patients (b).*

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SCHEDULE (D.) Section 48.

*Order for the Reception of a Pauper Patient, and Medical Certificate (c).*

(a) By the 16 & 17 Vict. c. 96, ss. 4 and 8, the form given in schedule (A.) No. 1 to that Act (see *post*, 724), is substituted for the form given in this schedule.

(b) By 16 & 17 Vict. c. 96, ss. 4, 5, 8, 10-13, the form given in schedule (A.) No. 2 to that Act (see *post*, 725),

is substituted for the form given in this schedule.

(c) By 16 & 17 Vict. c. 96, ss. 7, 10-13, the forms given in schedule (B.) Nos. 1 and 2 (see *post*, 726, 727), are substituted for the forms given in this schedule.

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SCHEDULE (E.) Section 50. REGISTRY OF ADMISSIONS.

### Register of Patients.

[illegible]

## SCHEDULE (F.) Section 52.

*Notice of Admission, and Statement (a).*3. *Private  
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## SCHEDULE (G. 1). Section 54.

*Register of Discharges and Deaths.*

Date of Discharge or Death.	Date of last Ad- mission.	No. in Register of Patients.	Christian and Surname at length.	Sex and Class.				Discharged.						Died.		Assigned cause of Death.	Age at Death.		Observations.
				Private.		Pauper.		Reco- vered.		Re- lieved.		Not im- proved.		M.	F.		M.	F.	
				M.	F.	M.	F.	M.	F.	M.	F.	M.	F.						
1846. Sept. 1	1846. Jan. 3	1	William Johnson	—	—	1	—	1											
1848. Dec. 2	1848. June 9	4	William Johnson	—	—	1	—	1											
1853. June 8	1852. May 6	7	William Johnson	—	—	1	—	—	—	—	—	—	—	1	—	Phthisis.	27		

## SCHEDULE (G. 2.) Section 54.

*Form of Notice of Discharge or Death (b).*

I hereby give you notice, that \_\_\_\_\_, a private [or pauper] patient, re-  
ceived into this house [or hospital] on the \_\_\_\_\_ day of \_\_\_\_\_, was  
discharged therefrom recovered [or relieved, or not improved] by the authority of  
[or died therein, on the \_\_\_\_\_ day of \_\_\_\_\_].

(Signed)  
Superintendent [or proprietor] of  
house [or hospital] at \_\_\_\_\_.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred  
and \_\_\_\_\_.

In case of death, add "And I further certify that A. B. was present at the  
death of the said \_\_\_\_\_; and that the apparent cause of death of the said  
[ascertained by post mortem examination (if so)] was \_\_\_\_\_."

## SCHEDULE (H.) Section 59.

*Form of Medical Journal and Weekly Report (c).*

(a) By 16 & 17 Vict. c. 96, s. 24,  
the forms given in schedule (C.) to  
that Act, *post*, 727, are substituted  
for the forms given in this schedule.

(b) Notice of the death of a pa-  
tient must be sent, in a prepaid let-  
ter, by post, to the relation or one of  
the relations named in the order for

reception (25 & 26 Vict. c. 111, s. 25,  
*post*, 732).

(c) By 16 & 17 Vict. c. 96, s. 25,  
the form of 'Medical Visitation  
Book' given in schedule (D.) to that  
Act, *post*, 728, is substituted for the  
form given by this section.

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#### SCHEDULE (I.) Section 100.

##### Form of Summons.

*We, the commissioners in lunacy [or we whose names are hereunto set and seals affixed, being two of the commissioners in lunacy, or visitors] appointed under or by virtue of an Act passed in the                      year of the reign of her present Majesty, intituled [here insert the title of the Act], do hereby summon and require you personally to appear before us at                      , in the parish of                      , in the county of                      , on                      next, the                      day of                      , at the hour of                      , in the                      noon of the same day, and then and there to be examined, and to testify the truth touching certain matters relating to the execution of the said Act.*

*Sealed with the common seal of "the commissioners in lunacy" [or given under our hands and seals], this                      day of                      , in the year of our Lord one thousand eight hundred and                      .*

8 & 9 Vict. c. 100.

The 16 & 17 Vict. c. 96, intituled "An Act to amend an Act passed in the Ninth Year of Her Majesty (a); for the Regulation of the Care and Treatment of Lunatics" [20th August, 1853], after reciting that an Act was passed in the ninth year of her Majesty, "for the Regulation of the Care and Treatment of Lunatics," and that it is expedient to amend the said Act as hereinafter mentioned, enacts as follows:—

Sect. 25 of recited Act repealed, and provision as to what may be included in one licence.

Sect. 1. Section twenty-five of the said recited Act shall be repealed, and any one licence to be granted for the reception of lunatics may, in the discretion of the commissioners or justices granting such licence, include two or more houses belonging to one proprietor, or to two or more joint proprietors, provided that no one of such houses be separated from the other or others of them otherwise than by land in the same occupation, and by a road, or by either of such modes; and all houses, buildings, and lands intended to be included in any licence shall be specified, delineated, and described in the plan required by section twenty-four of the said recited Act (b).

The person or one of the persons receiving a licence to reside on the premises.

Sect. 2. No person having, after the passing of the said recited Act (c), received for the first time a licence for the reception of lunatics, or hereafter receiving for the first time such licence, shall receive a licence unless he shall reside on the premises licensed; and no two or more persons having, after the passing of the said recited Act, received for the first time a joint licence for the reception of lunatics, or hereafter receiving for the first time such licence, shall receive such licence unless they or one of them shall reside on the premises licensed.

Sections 45, 46, 47, 48, and 49 of 8 & 9 Vict. c. 100, repealed.

Sect. 3. Sections forty-five, forty-six, forty-seven, forty-eight, and forty-nine of the said recited Act shall be repealed; but such repeal shall not prevent or defeat any prosecution for any offence committed before the commencement of this Act, and every such offence shall and may be prosecuted, and every pending prosecution continued, as if this Act had not been passed.

No person not a pauper to be received into a hospital or licensed house without a certain order and certificates.

Sect. 4. Save as hereinafter otherwise provided, no person (not being a lunatic) for or in respect of whom any money shall be paid or agreed to be paid shall be boarded or lodged in any licensed house; and save where otherwise provided or authorized under this or any other Act, no

(a) See *ante*, 678, *et seq.*

(b) See *ante*, 683.

(c) As to houses licensed before

the passing of the 8 & 9 Vict. c. 100, see the provisions of 25 & 26 Vict. c. 111, s. 16, *post*, 730.

person (not being a pauper (a)), shall be received as a lunatic into any licensed house or hospital without an order under the hand of some person (b) according to the form in schedule (A.) No. 1 annexed to this Act, together with such statement of particulars as is contained in the same schedule, nor without the medical certificates (c), according to the form (d) in schedule (A.) No. 2 annexed to this Act, of two persons, each of whom shall be a physician, surgeon, or apothecary, and shall not be in partnership with or an assistant to the other, and each of whom shall separately from the other have personally examined the person to whom the certificate signed by him relates, not more than seven clear days previously to the reception of such person into such house or hospital; and such order as aforesaid may be signed before or after the medical certificates or either of them; and every person who shall receive any such person as aforesaid into any such house or hospital as aforesaid (save where otherwise provided or authorized under this or any other Act) without such order and medical certificates as aforesaid shall be guilty of a misdemeanour.

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Sect. 5. Provided always, that any person (not a pauper) may, under special circumstances preventing the examination of such person by two medical practitioners as aforesaid, be received as a lunatic into any licensed house or any hospital upon such order as aforesaid, and with the certificate of one physician, surgeon, or apothecary alone, provided that the statement accompanying such order set forth the special circumstances which prevent the examination of such person by two medical practitioners; but in every such case two other such certificates shall, within three clear days after his reception into such house or hospital, be signed by two other persons, each of whom shall be a physician, surgeon, or apothecary, not in partnership with or an assistant to the other or the physician, surgeon, or apothecary who signed the certificate on which the patient was received, and not connected with such house or hospital, and shall within such time and separately from the other of them have personally examined the person so received as a lunatic; and every person who, having received any person as a lunatic into any house or hospital as aforesaid upon the certificate of one medical practitioner alone as aforesaid, shall keep or permit such person to remain in such house or hospital beyond the said period of three clear days without such further certificates as aforesaid, shall be guilty of a misdemeanour.

Provide that in certain cases any person may be received on a certificate signed by one medical practitioner only.

(a) The order and certificates required for the detention of a pauper patient will authorize his detention, though it afterwards appear that he is entitled to be classed as a private patient, and *vice versa*, 25 & 26 Vict. c. 111, s. 26, *post*, 732.

(b) No order under this Act will authorize the reception after the expiration of one calendar month from its date (25 & 26 Vict. c. 111, s. 23, *post*, 731), nor unless the person signing it has seen the patient within a month (*Id.*). Certain persons are prohibited signing orders, 25 & 26 Vict. c. 111, s. 24, *post*, 731.

Wherever it is possible, the name and address of one or more of the relations of the lunatic must be inserted in the order (25 & 26 Vict. c. 111, s. 25, *post*, 732).

(c) If the alleged lunatic is de-

tained under a certificate which is defective in a material point, he will be discharged upon a *habeas corpus*, unless it be shown that his discharge would be injurious to himself or dangerous. (*Reg. v. Pinder*, 24 L. J., Q. B. 148.)

The keeper of a licensed house, receiving a patient without the requisites of the statute being complied with, would be liable to indictment for a misdemeanour; but the patient would not be released upon a *habeas corpus* if the return showed that he was a dangerous lunatic. (*Re Shuttleworth*, 16 L. J., M. C. 18.)

(d) See as to the necessity of strictly following the form, and what constitutes a material defect in certificates given under this section, n. (a) to schedule (A.) No. 2, *post*, 724.



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Any person discharged may, with assent of visitors or commissioners, be retained in licensed house, and a relative or friend may, with like assent, be received therein.

Sect. 6. Provided also, that it shall be lawful for the proprietor or superintendent of any licensed house, with the previous assent in writing of two of the commissioners, such assent not to be given until after such commissioners have, by personal examination (*a*) of the patient, satisfied themselves of his desire to remain, to entertain and keep in such house as a boarder any person who may have been discharged as a patient (*b*) from such house for such time after such discharge as he may desire to remain, not exceeding the time specified in such assent, and also, for the benefit of any patient in such house, and with the previous assent in writing of two of the commissioners, to receive and accommodate as a boarder therein, for a time to be specified in the assent, any relative or friend of such patient, and any two of the commissioners may from time to time, by any writing under their hands, extend or revoke any such assent as aforesaid; and every such patient so retained after discharge, and every such relative or friend so accommodated, shall, if required, be produced to the commissioners and visitors respectively at their respective visits.

Paupers not to be received without a certain order and certificate.

Sect. 7. Save where otherwise provided or authorized under any Act, no pauper shall be received into any licensed house or any hospital without an order (*c*) according to the form in schedule (B.) No. 1 annexed to this Act, under the hand of one justice, or under the hands of an officiating clergyman, and the relieving officer or one of the overseers of the union or parish from which such pauper shall be sent, together with such statement of particulars as is contained in the same schedule, nor without the medical certificate, according to the form in schedule (B.) No. 2 annexed to this Act, of a physician, surgeon, or apothecary, who shall have personally examined the pauper to whom it relates not more than seven clear days previous to his reception; and every person who shall receive any pauper into any such house or hospital as aforesaid (save where otherwise provided or authorized under any Act) without such order and medical certificate as last aforesaid shall be guilty of a misdemeanour; provided always, that this enactment shall not by implication or otherwise give any power or authority to make such order, or extend, alter, or affect any power or authority expressly given by any Act to any justice, officiating clergyman, relieving officer, or overseer to make or join in making any such order, or any provisions giving or relating to such power or authority.

The like order and certificates for reception of a single patient as for reception of a private patient into a licensed house.

Sect. 8. Where, under section ninety of the said recited Act (*d*), the like order and medical certificates are required on the reception or taking the charge or care of any one person as a lunatic or alleged lunatic as are thereinbefore required on the reception of a patient (not being a pauper) into a licensed house, the like order and medical certificates (in lieu of those required as first aforesaid) shall hereafter be required (*e*) on the reception or taking the charge or care of any such person as are by this Act required on the reception of a patient (not being a pauper) into a licensed house.

Penalty on officers, etc., ill-treating lunatics.

Sect. 9. If any superintendent, officer, nurse, attendant, servant, or other person employed in any registered hospital, or licensed house, or any person having the care or charge of any single patient (*f*), or any

(*a*) So much of this section as requires personal examination is repealed by 18 & 19 Vict. c. 105, s. 16, *post*, 729.

(*b*) The power to take former patients as boarders is extended by 25 & 26 Vict. c. 111, s. 18, *post*, 731.

(*c*) See notes (*a*) and (*b*) to sect. 4 of this Act, *ante*, 715.

(*d*) See *ante*, 700.

(*e*) See sect. 4 of this Act, and the notes thereon, *ante*, 715.

(*f*) A husband having the care and charge of his wife, a lunatic, is not "a person having the care or charge" of a lunatic within the meaning of this section, which does not apply to persons whose care or charge is purely

attendant of any single patient, in any way abuse, or ill-treat, or wilfully neglect any patient in such hospital or house, or such single patient, or if any person detaining, or taking or having the care or charge, or concerned or taking part in the custody, care, or treatment, of any lunatic or person alleged to be a lunatic, in any way abuse, ill-treat, or wilfully neglect such lunatic or alleged lunatic, he shall be guilty of a misdemeanour, and shall be subject to indictment for every such offence, or to forfeit for every such offence, on a summary conviction thereof before two justices, any sum not exceeding twenty pounds.

Sect. 10. Every physician, surgeon, and apothecary signing any certificate under or for the purposes of this Act shall specify therein the facts upon which he has formed his opinion that the person to whom such certificate relates is a lunatic, an idiot, or a person of unsound mind, and distinguish in such certificate facts observed by himself from facts communicated to him by others (*a*); and no person shall be received into any registered hospital or licensed house, or as a single patient, under any certificate which purports to be founded only upon facts communicated by others.

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Medical certificate to specify facts upon which opinion of insanity has been formed.

Sect. 11. If after the reception of any lunatic it appear that the order or the medical certificate, or (if more than one) both or either of the medical certificates, upon which he was received, is or are in any respect incorrect or defective (*b*), such order and medical certificate or certificates may be amended by the person signing the same at any time within fourteen days next after the reception of such lunatic; Provided nevertheless, that no such amendment shall have any force or effect unless the same shall receive the sanction of one or more of the commissioners.

Orders and medical certificates may be amended.

Sect. 12. No physician, surgeon, or apothecary who, or whose father, brother, son, partner, or assistant, is wholly or partly the proprietor of, or a regular professional attendant in, a licensed house or a hospital, shall sign any certificate (*c*) for the reception of a patient into such house or hospital; and no physician, surgeon, or apothecary shall himself, or by his servants or agents, receive to board or lodge in any unlicensed house, or take the charge or care of any person upon or under any medical certificate signed by himself or his father, brother, son, partner, or assistant, and no physician, surgeon, or apothecary having (either before or after the passing of this Act) signed any certificate for the reception of any person shall be the regular professional attendant of such person while under care or charge under such certificate; and no physician, surgeon, or apothecary who, or whose father, brother, son, partner, or assistant, shall sign the order hereinbefore required for the

Who not to sign certificates, etc.

of a domestic character. (*Reg. v. Rundle*, 1 *Dear. C. C. R.* 482; 24 *L. J., M. C.* 129.) But where a brother voluntarily took charge of a lunatic, it was held that, notwithstanding the relationship, he was within the meaning of this section, and might, therefore, be indicted and convicted of the misdemeanour. (*Reg. v. Porter*, 1 *L. & C., C. C.* 394; 33 *L. J., M. C.* 126.)

(*a*) In an action against a physician for improperly signing a certificate, it is not necessary to allege or prove malice. If he signs such

certificate without taking due care and making due inquiries, he is liable for the consequences. And if on his own personal examination he is not satisfied, he is bound to make due inquiries. Nor is he the less liable for the want of such due care and inquiries because he has acted *bona fide*. (*Hall v. Simple*, 3 *F. & F.* 337.)

(*b*) See further as to defective certificates, 25 & 26 *Vict. c.* 111, s. 27, *post*, 732.

(*c*) See further as to persons prohibited signing certificates, 25 & 26 *Vict. c.* 111, s. 24, *post*, 731.

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A medical man giving false certificates, etc., and a person not being a medical man giving certificates as such, guilty of a misdemeanour.

Commissioners may permit medical visitation of any single patient less frequently than once a fortnight, but if patient be in the care of a medical man he is to make an entry once a fortnight as to patient's health.

Visitors of licensed houses may visit single patients on request of commissioners.

Annual report to be made to the commissioners by every medical man visiting or having charge of a single patient.

Provisions concerning dis-

reception of a patient, shall sign any certificate for the reception of the same patient.

Sect. 13. Any physician, surgeon, or apothecary who shall sign any certificate, or do any other Act (not declared to be a misdemeanour) contrary to any of the provisions herein contained, shall for every such offence forfeit any sum not exceeding twenty pounds; and any physician, surgeon, or apothecary who shall falsely state or certify anything in any certificate under this Act, and any person who shall sign any certificate under this Act in which he shall be described as a physician, surgeon, or apothecary, not being a physician, surgeon, or apothecary respectively within the meaning of this Act, shall be guilty of a misdemeanour.

Sect. 14. It shall be lawful for the commissioners, by an order under their common seal, where they see fit so to do, to permit the visitation of any single patient by a physician, surgeon, or apothecary less frequently than once in every two weeks, as required by section ninety of the said recited Act (a), and to prescribe from time to time how often any single patient shall be visited by such a physician, surgeon, or apothecary as therein mentioned; but where such visitation of any single patient so often as once in every two weeks is so dispensed with, and such patient is in the care or charge of a physician, surgeon, or apothecary, such physician, surgeon, or apothecary shall once at the least in every two weeks make an entry in a book to be kept for that purpose, to be called 'The Medical Journal,' of the condition of the patient's health, both mental and bodily, together with the date of such entry, and such book shall be produced to the visiting commissioner on every visit, and shall be signed by him as having been so produced, and every such physician, surgeon, or apothecary who shall make an untrue entry in the said book shall be guilty of a misdemeanour.

Sect. 15. It shall be lawful for one or more of the visitors appointed in or for any county or borough under the said recited Act, upon the request in writing of the commissioners, or any two of them, under their hands, so to do, to visit any person detained in any unlicensed house in such county or borough as a single patient, and to inquire into and report to the commissioners on the treatment and state of health, bodily and mental, of such patient, and to inspect the order and certificates on which such person was received; and the provisions of the said recited Act for and concerning the remuneration or payment of any such visitor, being a physician, surgeon, or apothecary, in respect of the execution of the duties of that Act, and for the payment of the costs, charges, and expenses incurred by any visitor in proceedings under that Act, shall extend and be applicable to and for the remuneration or payment of any visitor, being a physician, surgeon, or apothecary, visiting as aforesaid any single patient, and to and for the payment of the costs, charges, and expenses incurred by any visitor in or about such visit as aforesaid.

Sect. 16. Every physician, surgeon, and apothecary who visits any single patient, or under whose care or charge any single patient shall be, shall on the tenth day of January, or within seven days from that time, in every year report in writing to the commissioners the state of health, bodily and mental, of such patient, with such other circumstances as he may deem necessary to be communicated to the commissioners; and it shall be lawful for the commissioners, at any other time and from time to time as they see occasion, to call for and require from any such physician, surgeon, or apothecary a report in writing relative to any single patient visited by him or under his care or charge in such form and specifying such particulars as the commissioners may direct.

Sect. 17. The provisions contained in sections seventy-two and seventy-

(a) See ante, 700.

three of the said recited Act (a) for the discharge of patients (not being paupers) from licensed houses shall extend and be applicable to and for the discharge of any single patient: Provided always, that this enactment shall not extend to authorize the discharge of any single patient, if the physician, surgeon, or apothecary who has the care or charge of or visits such patient certify in writing under his hand that in his opinion such patient is dangerous, and unfit to be at large, together with the grounds on which such opinion is founded, unless one of the commissioners shall consent in writing to the discharge of such patient.

Sect. 18. It shall be lawful for the Lord Chancellor, upon the report of the commissioners in lunacy, to order the discharge of any person received or detained as a single patient, or to give such orders and directions in reference to such patient as the Lord Chancellor shall think fit; and any person detaining any such patient for the space of three days after a copy of such order for his discharge shall have been served on him, or left at the house in which such person so ordered to be discharged is detained, shall be guilty of a misdemeanour.

Sect. 19. The superintendent or proprietor of every registered hospital and licensed house, and every person having the care or charge of any single patient, shall forthwith, upon the recovery of any patient in such hospital or house, or of such single patient, transmit notice of such recovery in the case of a patient not a pauper to the person who signed the order for his reception, or by whom the last payment on account of such patient was made, and in the case of a pauper to the guardians of his union or parish, or if there be no such guardians to one of the overseers of the poor of his parish, or if such pauper be chargeable to any county to the clerk of the peace thereof, and in case such patient be not discharged or removed within fourteen days from the giving of such notice, such superintendent, proprietor, or person as aforesaid shall immediately after the expiration of such period transmit notice of the recovery of such patient to the commissioners, and also, in the case of a licensed house within the jurisdiction of any visitors, to the clerk of such visitors, with the date of the notice firstly in this enactment mentioned, and where notice is so given to the clerk of any visitors he shall forthwith communicate the same to the visitors, or two of them, one of whom shall be a physician, surgeon, or apothecary; and in case of the death of any patient in any hospital or licensed house (b), a statement setting forth the time and cause of the death, and the duration of the disease of which such patient died, shall be prepared and signed by the medical person or persons who attended the patient during the illness which terminated in death, and such statement shall be entered in the 'Case Book,' and a copy of such statement, certified by the superintendent or proprietor, shall, within two days of the date of the death, be transmitted to the coroner for the county or borough, and in case such coroner, after receiving such statement, shall think that any reasonable suspicion attends the cause and circumstances of the death of such patient, he shall summon a jury to inquire into the cause of such death.

Sect. 20. Any person, having authority to order the discharge of any patient (not being a pauper) from any asylum, registered hospital, or licensed house, or of any single patient, may, with the previous consent in writing of two of the commissioners, direct, by an order in writing under his hand, the removal of such patient to any asylum, registered hospital, or licensed house, or to the care or charge of any person mentioned or named in such order; and every such order and consent shall be made and given respectively in duplicate, and one of the duplicates

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charge of patients from licensed houses by relatives extended to single patients.

Lord Chancellor, upon report of commissioners, may order discharge, etc., of any single patient.

On recovery of a patient notice to be given to friends, and in the case of a pauper to guardians, etc., and in default of discharge or removal, to commissioners and visitors.

Provision in case of death of patient in any hospital or licensed house.

Provision authorizing transfer of private and single patients.

(a) See *ante*, 696.

(b) By 25 & 26 Vict. c. 111, s. 44, *post*, 735, these provisions requiring

notice to be given to the coroner of the death of a patient, are extended to the case of single patients.

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shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or house from which or the person from whose care or charge the patient is ordered to be removed, and the other duplicate shall be delivered to and left with the superintendent or proprietor of the asylum, hospital, or house into which or the person into whose care or charge the patient is ordered to be removed; and such order for removal, together with such consent in writing, shall be a sufficient authority for the removal of such patient, and also for his reception into the asylum, registered hospital, or licensed house into which or by the person into whose care or charge he is ordered to be removed: Provided always, that a copy of the order and certificates upon which such patient was received into the asylum, hospital, or house from which he is removed, or as a single patient, by the person from whose care he is removed, certified under the hand of the superintendent or proprietor of such asylum, hospital, or house, or of such person as last aforesaid, to be a true copy, shall be furnished by him free of expense, and shall be delivered, with one duplicate of the said order of removal and consent, to the superintendent or proprietor of the asylum, hospital, or house to which or to the person to whose care or charge such patient is removed.

Notice of discharge of single patients to be sent to the commissioners.

Sect. 21. Every person from whose care or charge any single patient shall be discharged shall transmit to the commissioners a written notice of such discharge within the like period, and under the like penalty for default, as by the said recited Act is required (a) and provided in the case of the discharge of a patient from a licensed house.

Provisions as to change of residence of persons having charge of single patients, and temporary removal of such patients for benefit of health.

Sect. 22. It shall be lawful for any person having the care or charge of a single patient to change his residence, and remove such patient to any new residence of such person, in England, provided that seven clear days before such change of residence he give notice in writing thereof, and of the place of such new residence, to the commissioners and to the person who signed the order for the reception of such patient, or by whom the last payment on account of such patient was made; and it shall be lawful for any person having the care or charge of any single patient, having first obtained the consent of two of the commissioners, to take or send such patient, under proper control, to any specified place or places, for any definite time, for the benefit of his health: Provided always, that before any such consent shall be given, the approval in writing of the person who signed the order for the reception of such patient, or by whom the last payment on account of such patient was made, shall be produced to such commissioners, unless they shall, on cause being shown, dispense with the same.

On representation of commissioners Lord Chancellor may require statement of property of lunatic.

Sect. 23. Where any person has already been received as a lunatic under order and certificates, and shall be detained thereunder, and where any person shall hereafter be in like manner received and detained, and the commissioners represent to the Lord Chancellor that it is desirable that the extent and nature of his income should be ascertained, and the application thereof, the Lord Chancellor may, if he think fit, through the registrar in lunacy, require that the person signing the order, or other the person paying for the care and maintenance of the lunatic, or having the management of the property, shall transmit to the Lord Chancellor a statement in writing, to the best of his knowledge, of the particulars of the property and income of the lunatic and of the application of the income.

Form of notice of admission.

Sect. 24. The notice of admission and statement mentioned or referred to in section fifty-two of the said recited Act (b) shall hereafter be according to the form mentioned in schedule (C.) annexed to this Act, in

(a) See 8 & 9 Vict. c. 100, s. 54, *ante*, 689.

(b) See *ante*, 689.

lieu of the form set forth in schedule (F.) to the said recited Act; and such statement shall be signed by the medical superintendent, proprietor, or attendant of the hospital or licensed house from which the same is sent, and the said notice and statement shall be accompanied by a copy of the several documents mentioned in the said notice.

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Sect. 25. The medical visitation book mentioned in section fifty-nine (a) of the said recited Act shall henceforth be kept in the form set forth in schedule (D.) annexed to this Act, in lieu of the form set forth in schedule (H.) to the said recited Act; and the said section shall be construed as if the particulars mentioned in the several heads of the said form in the said schedule (D.) had by the said section been required to be entered in the said book in lieu of the particulars mentioned in the said section.

Form of medical visitation book.

Sect. 26. The superintendent or proprietor of every registered hospital or licensed house shall, within one week after the dismissal for misconduct of any nurse or attendant employed in such hospital or house, transmit to the commissioners, by the post, information in writing under his hand of such dismissal, and of the cause thereof; and every superintendent or proprietor neglecting to transmit such information to the commissioners within the period aforesaid shall for every such offence forfeit any sum not exceeding ten pounds.

Notice of dismissal for misconduct of attendants to be sent to commissioners.

Sect. 27. Section eighty-nine of the said recited Act (b), constituting from among the commissioners a private committee for the purposes in the said Act mentioned, shall be repealed, and all the powers vested in, and all the provisions of the said Act (c) applicable to, the said private committee, or one or two members thereof, shall be vested in and be applicable to the commissioners, or one commissioner, or two commissioners (as the case may require), as if, where in the said Act the said private committee, or one member or two members thereof (as the case may be), is or are mentioned or referred to, the commissioners, or one commissioner, or two commissioners (as the case may require), had been mentioned or referred to, instead thereof.

Powers vested in private committee to be vested in the commissioners.

Sect. 28. Section one hundred and eleven of the said recited Act shall be repealed, and any one or more of the commissioners shall and may on such day or days, and at such hours in the day, and for such length of time as he or they shall think fit, visit all such parish and union workhouses in which there shall be or be alleged to be any lunatic, as the commissioners shall by any resolution or resolutions of the board direct, and shall inquire whether the provisions of the law as to lunatics in such parish or union have been carried out, and also as to the dietary, accommodation, and treatment of the lunatics in such workhouses, and shall report in writing thereon to the Poor Law Board.

Repeal of section 111 of recited Act, and provision as to visitation of workhouses.

Sect. 29. It shall be lawful for the commissioners, where, for any reasons to be entered upon the minutes of the board, any case appears to them specially to call for immediate investigation, to authorize and direct, by an order under their common seal, any competent person or persons to visit and examine and report to them upon the mental and bodily state and condition of any lunatic or alleged lunatic in any asylum, hospital, or licensed house, or of any pauper lunatic in a workhouse or elsewhere, or of any lunatic or alleged lunatic under the care or charge of any person as a single patient, and to inquire into and report upon any matters into which the commissioners are authorized to inquire; and every such person shall, for the special purposes mentioned in such order, have all the powers of a commissioner; and the commissioners may allow to every such person a reasonable sum for his

Commissioners may in any special case employ persons to make the necessary inquiries, and report to them thereon.

(a) See *ante*, 691.

(b) See *ante*, 700.

(c) See 8 & 9 Vict. c. 100, ss. 92 and 93, *ante*, 701.

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Regulations for hospitals to be submitted to secretary of state.

services and expenses, such sum to be paid in manner provided by the said recited Act with regard to expenses incurred by or under the authority of the commissioners in proceedings thereunder; but this enactment shall not be taken to exonerate the commissioners from the performance of any duty by law imposed on them.

Sect. 30. The committee having the management or government of every registered hospital shall, within three months after the passing of this Act in the case of every hospital now registered, and within three months after the registration of every hospital hereafter to be registered under the said recited Act, submit the existing regulations, or regulations to be framed by such committee, to one of her Majesty's principal secretaries of state, for his approval, and any such committee may, with the like approbation, alter and vary such regulations as they think necessary; and all such regulations so approved shall be printed, abided by, and observed, and a copy thereof shall be sent to the commissioners, and another copy thereof kept hung up in the visitors' room of the hospital.

Commissioners may make regulations for the government of licensed houses.

Sect. 31. It shall be lawful for the commissioners, with the sanction and approbation of one of her Majesty's principal secretaries of state, from time to time to make regulations for the government of any house licensed for the reception of lunatics; and such regulations of the commissioners, or a copy thereof, shall be transmitted by their secretary to the proprietor or resident superintendent of every licensed house to which the same relate, and shall be abided by and observed therein.

Time at which reports of commissioners to the Lord Chancellor as to the state of asylums, etc., are to be made.

Sect. 32. The report required by section eighty-eight of the said recited Act (*a*) to be made by the commissioners to the Lord Chancellor in the month of June in every year of the state and condition of the several houses, hospitals, asylums, and other places visited by them under that Act, and of the care of the patients therein, and of such other particulars as they think deserving of notice, shall be made in or before the month of March in every year, and shall be made up to the end of the preceding year.

Provision for payment of persons employed to inspect places where lunatics are confined extended to persons visiting under s. 112 of 8 & 9 Vict. c. 100.

Sect. 33. The provision in section one hundred and thirteen of the said recited Act (*b*), for and concerning the payment for attendance and trouble of any person (not being a commissioner) employed under that enactment, and of the travelling or other expenses of any person so employed, and as to the fund out of which such payment is to be made, shall extend and be applicable to and in the case of any person (not being a commissioner) required to visit and examine any lunatic or supposed lunatic under section one hundred and twelve of the said recited Act (*c*).

Penalty on persons obstructing execution of orders of Lord Chancellor or secretary of state, made under sects. 112 or 113 of recited Act, or of commissioners made under this Act.

Sect. 34. Any person who wilfully obstructs the commissioners or any of them, or any other person authorized by an order in writing under the hand of the Lord Chancellor or her Majesty's principal secretary of state for the home department, pursuant to the provisions of section one hundred and twelve or one hundred and thirteen of the said recited Act (*d*), to visit and examine any lunatic or supposed lunatic, or to inspect or inquire into the state of any asylum, hospital, gaol, house, or place wherein any lunatic or person represented to be lunatic is confined or alleged to be confined, in the execution of such order, and any person who wilfully obstructs any person authorized under this Act by any order of the commissioners to make any visit and examination or inquiry in the execution of such order, shall (without prejudice to any proceedings, and in addition to any punishment to which such person

(*a*) See *ante*, 699.  
(*b*) See *ante*, 708.

(*c*) See *ante*, 708.  
(*d*) See *ante*, 708.

obstructing the execution of such order would otherwise be liable), forfeit for every such offence any sum not exceeding twenty pounds.

Sect. 35. Section one hundred and sixteen of the said recited Act shall be repealed, and the royal hospital of Bethlehem shall henceforth be subject to the provisions of the said recited Act and of this Act, in the same manner as if the same had not been exempted from the said recited Act, and shall be forthwith registered as an hospital accordingly, in pursuance of section forty-three of the said recited Act (*a*).

Sect. 36. In the construction of the said recited Act and of this Act the words "physician," "surgeon," and "apothecary" (*b*) shall respectively mean a physician, surgeon, and apothecary duly authorized or licensed to practise as such by or as a member of some college, university, company, or institution legally constituted and qualified to grant such authority or licence in some part of the United Kingdom, or having been in practice as an apothecary in England or Wales on or before the first day of August, one thousand eight hundred and fifteen, and being in actual practice as such physician, surgeon, or apothecary; the expression "officiating clergyman of the parish" shall include the chaplain of the workhouse of the same parish, or the workhouse of the union to which such parish belongs; the expression "single patient" shall mean any person received or taken charge of as a lunatic under section ninety of the said recited Act, or under such section as amended by this Act; and the expression "attendant" shall mean any person, whether male or female, who shall be employed either wholly or partially in the personal care, control, or management of any lunatic in any registered hospital or licensed house, or of any single patient; and in the construction of this Act the word "board," as used in relation to the commissioners in lunacy, shall mean any three or more of the commissioners assembled at a meeting convened in pursuance of section sixteen of the said recited Act, or holden under any order or rule for the time being in force made under section seventy of the said recited Act for regulating the duties of the commissioners.

Sect. 37. The said recited Act and this Act shall be construed together as one Act, and a Queen's printers' copy of this Act shall be bound up in the 'Visitors' Book' of every hospital and licensed house together with the said recited Act.

Sect. 38. Nothing in this Act shall affect the provisions of any of the following Acts; (that is to say) an Act of the session holden in the thirty-ninth and fortieth years of King George the Third, chapter ninety-four; an Act of the session holden in the first and second years of her Majesty, chapter fourteen; and an Act of the session holden in the third and fourth years of her Majesty, chapter fifty-four, or any other provisions concerning criminal lunatics, save as hereinafter provided; that is to say, it shall be lawful for one of her Majesty's principal secretaries of state to issue his warrant to remove or discharge any insane person who shall be in custody under the provisions of the said Act of the third and fourth years of her Majesty, chapter fifty-four, provided it shall be duly certified to such secretary of state, by two physicians or surgeons, that such insane person was harmless and might be discharged from restraint as an insane person without danger to himself or to others, in like manner as if it had been certified to such secretary of state that such person had become of sound mind, anything in the

### 3. *Private Lunatic Asylums.*

Sect. 116 of recited Act repealed, and Bethlehem hospital to be subject to this Act.

Interpretation of terms.

Recited Act and this Act to be construed as one Act, etc.

Act not to affect provisions relating to criminal lunatics (*c*), 39 & 40 Geo. 3, c. 94, 1 & 2 Vict. c. 14, and 3 & 4 Vict. c. 54, save as herein provided.

(*a*) See *ante*, 688.

(*b*) The 25 & 26 Vict. c. 111, s. 47, *post*, 736, enacts that the term physician, surgeon, or apothecary, wherever used in the "Lunacy Acts,"

shall mean a person registered under the "Medical Act" (21 & 22 Vict. c. 90).

(*c*) As to criminal lunatics, see *ante* (tit. "Criminal Lunatics"), 581.



### 3. *Private Lunatic Asylums.*

Secretary to the commissioners, if at the time of his appointment a practising barrister of five years' standing, eligible to be appointed a commissioner.

said Act or any other Act to the contrary thereof in anywise notwithstanding.

Sect. 39. And whereas by the said recited Act it is provided that every person to be appointed in the room of any commissioner, being a barrister of five years' standing at the bar and upwards, shall be a practising barrister of not less than five years' standing at the bar: And whereas it is expedient to amend the said provisions as hereinafter mentioned; the present or any future secretary to the commissioners, if at the time of his appointment to be such secretary he was or shall have been a practising barrister of not less than five years' standing at the bar, shall be eligible to be appointed a commissioner in the room of any such commissioner as aforesaid.

Commencement of Act.

Sect. 40. This Act shall commence and come into operation on the first day of November, one thousand eight hundred and fifty-three.

## SCHEDULES TO THE FOREGOING ACT (a).

### SCHEDULE (A.) No. 1. Sections 4, 8.

#### *Order for the Reception of a Private Patient (b).*

*I, the undersigned, hereby request you to receive A. B., a lunatic [or an idiot, or a person of unsound mind], as a patient into your house [or hospital]. Subjoined is a statement respecting the said A. B.*

(Signed)

Name.

Occupation (if any).

Place of abode.

Degree of relationship (if any), or other circumstance of connection with the patient.

Dated this                      day of                      , one thousand eight hundred and

To                      , proprietor [or superintendent] of                      [describing the house or hospital by situation and name, if any].

#### *Statement (b).*

*[If any particulars in this Statement be not known, the fact to be so stated.]*

Name of patient, with Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

(a) The forms in these schedules must be strictly followed. (*Reg. v. Pinder*, 24 L. J. (N. S.), Q. B. 148.)

(b) By 25 & 26 Vict. c. 111, s. 23, *post*, 731, it is provided that the person signing an order under this Act must have seen the patient within one month. And a statement of the time and place when such person

last saw the patient must be added. (*Ibid.*)

As to persons prohibited from signing orders, see 25 & 26 Vict. c. 111, s. 24, *post*, 731.

Wherever it be possible, the name and address of one or more relations of the patient must be inserted in the order. (25 & 26 Vict. c. 111, s. 25, *post*, 732.)

The religious persuasion, as far as known.

Previous place of abode.

Whether first attack.

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others.

Whether found lunatic by inquisition, and date of commission or order for inquisition.

Special circumstances (if any) preventing the patient being examined, before admission, separately by two medical practitioners.

(Signed) Name.

[Where the person signing the statement is not the person who signs the order, the following particulars concerning the person signing the statement are to be added, viz. :—

Occupation (if any).

Place of abode.

Degree of relationship (if any) or other circumstances of connection with the patient.

#### SCHEDULE (A.) No. 2 (a). Sections 4, 5, 8, 10, 11, 12, 13.

##### Form of Medical Certificate.

*I, the undersigned* [here set forth the qualification entitling the person certifying to practise as a physician, surgeon, or apothecary, *ex. gr.*, being a Fellow of the Royal College of Physicians in London], and being in actual practice as a [physician, surgeon, or apothecary, as the case may be], hereby certify that I, on the                      day of                      , at                      [here insert the street and number of the house (if any), or other like particulars], in the county of                      , separately from any other medical practitioner, personally examined A. B. of                      [insert residence and profession or occupation, if any], and that the said A. B. is a [lunatic, or an idiot, or a person of unsound mind], and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz. :—

1. *Facts indicating insanity observed by myself* [here state the facts].
2. *Other facts (if any) indicating insanity communicated to me by others* [here state the information, and from whom].

(Signed)

Place of abode.

Dated this                      day of                      , one thousand eight hundred and                      .

(a) A medical certificate is bad if it merely state that the medical man examined the alleged lunatic at B. (a considerable town), and omit to specify the street and number of the house or

other like particulars respecting the place where such examination was made. (*Reg. v. Pinder*, 24 L. J. (N. S.), Q. B. 148.)

3. *Private  
Lunatic  
Asylums.*

SCHEDULE (B.) No. 1. Section 7.

*Order for the Reception of a Pauper Patient (a).*

*Schedules.*

I, C. D. [or, in the case of a clergyman and relieving officer, etc., we, C. D. and E. F.], the undersigned, having called to my [or our] assistance a physician [or surgeon, or apothecary, as the case may be], and having personally examined A. B., a pauper, and being satisfied that the said A. B. is a lunatic [or an idiot, or a person of unsound mind] and a proper person to be taken charge of and detained under care and treatment, hereby direct you to receive the said A. B. as a patient into your house [or hospital]. Subjoined is a statement respecting the said A. B.

(Signed) C. D.

A justice of the peace for the county,  
city, or borough of \_\_\_\_\_,  
[or an or the officiating clergyman  
for the parish of \_\_\_\_\_].

(Signed) E. F.

The relieving officer of the union or  
parish of \_\_\_\_\_ [or an over-  
seer of the parish of \_\_\_\_\_].

Dated the \_\_\_\_\_ day of \_\_\_\_\_, one thousand eight hundred \_\_\_\_\_.

To \_\_\_\_\_ proprietor [or superintendent] of \_\_\_\_\_ [describing  
the house or hospital].

*Statement.*

[If any particulars in this Statement be not known, to be so stated.]

Name of patient, and Christian name at length.

Sex and age.

Married, single, or widowed.

Condition of life, and previous occupation (if any).

The religious persuasion, as far as known.

Previous place of abode.

Whether first attack.

Age (if known) on first attack.

When and where previously under care and treatment.

Duration of existing attack.

Supposed cause.

Whether subject to epilepsy.

Whether suicidal.

Whether dangerous to others.

Parish or union to which the lunatic is chargeable.

Name and Christian name and place of abode of nearest known relative of the patient, and degree of relationship (if known).

I certify that, to the best of my knowledge, the above particulars are correctly stated.

(Signed)

Relieving officer [or overseer].

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(a) See note (a) to schedule (A.) No. 1, ante, 724.

SCHEDULE (B.) No. 2. Sections 7, 10, 11, 12, 13.

3. Private  
Lunatic  
Asylums.*Form of Medical Certificate.**Schedules.*

*I, the undersigned* [here set forth the qualification entitling the person certifying to practise as a physician, surgeon, or apothecary, *ex. gr.*, being a Fellow of the Royal College of Physicians in London], and being in actual practice as a [physician, surgeon, or apothecary, as the case may be], hereby certify that I, on the \_\_\_\_\_ day of \_\_\_\_\_, at [here insert the street and number of the house (if any) or other like particulars], in the county of \_\_\_\_\_, personally examined A. B. of [insert residence and profession or occupation (if any)], and that the said A. B. is a [lunatic, or an idiot, or a person of unsound mind], and a proper person to be taken charge of and detained under care and treatment, and that I have formed this opinion upon the following grounds, viz. :—

1. *Facts indicating insanity observed by myself* [here state the facts].
2. *Other facts (if any) indicating insanity communicated to me by others* [here state the information, and from whom].

(Signed)

Place of abode.

*Dated this* \_\_\_\_\_ *day of* \_\_\_\_\_, *one thousand eight hundred and* \_\_\_\_\_.

SCHEDULE (C.). Section 24.

*Notice of Admission.*

*I hereby give you notice, that A. B. was admitted into this house* [or hospital] *as a private* [or pauper] *patient on the* \_\_\_\_\_ *day of* \_\_\_\_\_ *and I hereby transmit a copy of the order and medical certificates* [or certificate] *on which he was received.* [If a private patient be received upon one certificate only, the special circumstances which have prevented the patient from being examined by two medical practitioners to be here stated, as in the statement accompanying the order for admission].

*Subjoined is a statement with respect to the mental and bodily condition of the above-named patient.*

(Signed)

Superintendent [or proprietor] of

*Dated the* \_\_\_\_\_ *day of* \_\_\_\_\_, *one thousand eight hundred and* \_\_\_\_\_.

*Statement.*

*I have this day* [some day not less than two clear days after the admission of the patient] *seen and examined* \_\_\_\_\_, *the patient mentioned in the above notice, and hereby certify that with respect to mental state he* [or she] \_\_\_\_\_, *and that with respect to bodily health and condition he* [or she] \_\_\_\_\_.

(Signed)

Medical proprietor [or superintendent, or attendant] of \_\_\_\_\_.

*Dated the* \_\_\_\_\_ *day of* \_\_\_\_\_, *one thousand eight hundred and* \_\_\_\_\_.

3. *Private  
Lunatic  
Asylums.*

## SCHEDULE (D.). Section 25.

*Form of Medical Visitation Book.**Schedules.*

Date.	Number and class of patients.				Patients who are, or since the last entry have been, under restraint, or in seclusion, when, and for what period, and reasons, and, in cases of restraint, by what means.				Patients under medical treatment, and for what (if any) bodily disorder.		Deaths, injuries, and violence to patients since the last entry.
	Private.		Pauper.		Restraint.		Seclusion.				
M.	F.	M.	F.	Males.	Fe- males.	Males.	Fe- males.	Males.	Fe- males.		

18 & 19 Vict. c.  
105.

The 18 & 19 Vict. c. 105, intituled, "An Act to Amend the Lunatic Asylums Act, 1853 (*a*), and the Acts passed in the Ninth (*b*) and Seventeenth (*c*) Years of Her Majesty, for the Regulation of the Care and Treatment of Lunatics" [14th August, 1855], enacts:—

Sects. 1 to 8 inclusive, relate only to county and public asylums, and will be found *ante* (tit. "*County Asylums*"), 663–665.

**Powers of commissioners and visitors to continue applicable to a house which has been licensed after expiration of licence, while any patients are therein.**

Sect. 9. The powers of the commissioners and visitors under the "Lunatic Asylums Act, 1853," and the Acts of the eighth and ninth years of her Majesty, chapter one hundred (*b*), and the sixteenth and seventeenth years of her Majesty, chapter ninety-six (*c*), with reference to any licensed house and the inmates thereof, and all powers and provisions of the said Acts having reference to the discharge, removal, and transfer of such inmates, shall, after the expiration or revocation of any licence granted in respect of such house, continue in force for all purposes, so long as any lunatics are detained therein, in the same manner as if the licence subsisted.

Sections 10 to 14 inclusive, relate to county asylums, and will be found *ante* (tit. "*County Asylums*"), 665–667.

**Seals of commissioners, visitors, and justices, to orders, etc., dispensed with.**

Sect. 15. In all cases, in which, under the "Lunatic Asylums Act, 1853," or the Act of the session holden in the eighth and ninth years of her Majesty, chapter one hundred, or the Act of the session holden in the sixteenth and seventeenth years of her Majesty, chapter ninety-six, any order or other instrument is required to be under the hand and seal or hands and seals of any visitor or visitors, justice or justices, it shall be sufficient for such order or instrument to be signed only; and all such orders and instruments as aforesaid which have been signed before the passing of this Act, and have not had a seal or seals affixed to them, as

(*a*) See *ante*, 601.

(*b*) See *ante*, 678.

(*c*) See *ante*, 714.

by law required, shall be and be deemed to have been valid and sufficient to justify any proceeding thereon or thereunder.

Sect. 16. So much of section six of the said Act of the sixteenth and seventeenth years of her Majesty, chapter ninety-six (*a*), as requires such assent as therein mentioned of two of the commissioners not to be given until after such commissioners have by personal examination of the patient satisfied themselves of his desire to remain, shall be repealed.

Sect. 17. The superintendent of any registered hospital may, with the consent in writing of two members of the committee having the management or government of such hospital, send or take, under proper control, any patient to any specified place for any definite time for the benefit of his health; and any such consent, and any consent under section eighty-six of the said Act of the eighth and ninth years of her Majesty, chapter one hundred (*b*), may be from time to time renewed and the place varied (*c*).

Sect. 18. If after the lapse of two months from the expiration of any licence for the use of any house for the reception of lunatics which has not been renewed, or if after the revocation of any such licence there be in any such house two or more lunatics, every person keeping such house, or having the care and charge of such lunatics, shall be guilty of a misdemeanour.

Sect. 19. This Act, so far as the same amends or affects the said Acts of the eighth and ninth years of her Majesty, chapter one hundred, and of the sixteenth and seventeenth years of her Majesty, chapter ninety-six, or either of them, shall be read and construed together with the said Acts as one Act, and the provision contained in section one hundred and six of the said Act of the eighth and ninth years of her Majesty (*d*) shall extend to offences against this Act; and this Act, so far as the same amends or affects the "Lunatic Asylums Act, 1853," shall be read and construed therewith as one Act.

The 25 & 26 Vict. c. 111, intituled, "An Act to amend the Law relating to Lunatics" [7th August, 1862], after reciting that it is expedient to amend the law relating to lunatics, other than those found lunatics by inquisition, or lunatics convicted of crime, or acquitted on the ground of insanity: enacts as follows:—

Sects. 1 to 3 (preliminary) relate to the interpretation of terms, and the commencement and short title of this Act, and will be found *ante* (tit. "County Asylums"), 668, 669.

Sects. 4 to 13 (*Establishment of County Asylums*) will be found *ante* (tit. "County Asylums"), 669–672.

#### *Licensed Houses.*

Sect. 14. Before the grant by the justices of a licence (*e*) for the reception of lunatics to a house which has not been previously licensed for that purpose, the notice given by the applicant, and the plan and statements accompanying the same, or copies of such notice, plan, and statements respectively, shall be transmitted by the applicant to the commissioners, and the commissioners shall inspect or cause to be inspected the house and land or appurtenances proposed to be included in the licence, and shall ascertain, with reference as well to the situation as to

#### *3. Private Lunatic Asylums.*

So much of sect. 6 of 16 & 17 Vict. c. 96, as requires personal examination of patients, repealed.

Consent of committee of management of any hospital sufficient to authorize a patient being sent to any place for health.

Detention of lunatics after expiration of or revocation of licence a misdemeanour.

Act to be read with the Acts amended as one Act.

Inspection by commissioners before licence granted by justices.

(*a*) See *ante*, 716.

(*b*) See *ante*, 699.

(*c*) The provisions of this section are extended by 25 & 26 Vict. c. 111,

s. 38, *post*, 734, to patients allowed to be absent on trial.

(*d*) See *ante*, 706.

(*e*) 8 & 9 Vict. c. 100, s. 17, *ante*, 680.

### 3. *Private Lunatic Asylums.*

the structure, arrangements, and condition of the premises, whether the same are suitable for the reception of the patients proposed to be received therein, and the commissioners shall transmit to the clerk of the peace for the county or borough a report in reference to such application; and no licence shall be granted by the justices of the county or borough, in pursuance of such application, until the report of the commissioners with reference thereto has been received by the said clerk of the peace, and taken into consideration by the justices in general or quarter or special sessions assembled.

Where a licence is granted by the justices of a county or borough in respect of a house not previously licensed, such licence shall, as nearly as conveniently may be, be according to the form in the schedule marked A. to this Act, instead of in the form prescribed by the "Lunacy Act," chapter one hundred.

Notice of alterations to be given to the commissioners.

Sect. 15. Before the consent of any visitors is given (*a*) to any addition or alteration being made in or about any licensed house, or the appurtenances, the notice of the proposed addition or alteration, and plan thereof, and accompanying description given to the clerk of the peace, or copies thereof respectively, shall be transmitted by him to the commissioners, who shall, after making or causing to be made such inquiries or inspection (if any) as they may deem proper, transmit to the said clerk of the peace a report stating their approval or disapproval thereof; and the visitors shall not consent to such addition or alteration until they have received and considered such report.

Provision as to non-resident proprietors.

Sect. 16. Whereas by the second section of the "Lunacy Act," chapter ninety-six (*b*), it is enacted, "that no person having, after the passing of the 'Lunacy Act,' chapter one hundred, received for the first time a licence for the reception of lunatics, or thereafter receiving for the first time such licence, shall receive a licence unless he resides on the premises licensed, and no two or more persons having, after the passing of the last-mentioned Act, received for the first time a joint licence for the reception of lunatics, or thereafter receiving for the first time such joint licence, shall receive such licence unless they or one of them should reside on the premises licensed:" And whereas it is expedient that in the licensed houses to which the said section does not apply, by reason of the proprietor or proprietors thereof having first received a licence prior to the date mentioned in the said section, the following provision shall be made: Be it enacted,

That in all cases of licensed houses, where the proprietor or proprietors thereof have first received their licence or licences before the date of the passing of the "Lunacy Act," chapter one hundred, the physician, surgeon, or apothecary required by Act of Parliament to reside in or visit such house shall be approved, in the case of a house licensed by the commissioners, by the commissioners, and in the case of a house licensed by justices, by the justices; and any proprietor of a licensed house to which this section applies who permits any physician, surgeon, or apothecary who has not been approved by the commissioners, or by the justices, as the case may be, to reside in or visit at such house in such capacity as aforesaid for a period exceeding one calendar month, shall incur a penalty not exceeding five pounds for every day beyond such month during which such physician, surgeon, or apothecary so resides or visits; the above-mentioned period of one month shall be reckoned in the case of a physician, surgeon, or apothecary so resident or visiting at the time of the passing of this Act from the date of the passing thereof, and in the case of any fresh appointment of any such

(*a*) See 8 & 9 Vict. c. 100, s. 26, *ante*, 683.

(*b*) See *ante*, 714.

physician, surgeon, or apothecary as aforesaid from the date of such appointment.

### 3. *Private Lunatic Asylums.*

Sect. 17. If any person empowered by licence issued under the "Lunacy Act," chapter one hundred, to employ his house and premises for the reception of lunatics receives into his house any patients beyond the number specified in his licence, or fails to comply with the regulations of his licence in respect of the sex of the patients to be received, or the class of patients, whether private or not, to be received, he shall, in respect of each patient received in contravention of his licence, incur a penalty not exceeding fifty pounds.

Penalty on infringing terms of licence.

Sect. 18. It shall be lawful for the proprietor or superintendent of any licensed house, with the previous assent in writing of two or more of the commissioners, or in the case of a house licensed by justices of two or more of the visitors, to entertain and keep in such house as a boarder for such time as may be specified in the assent any person who may have been within five years immediately preceding the giving of such assent a patient in any asylum, hospital, or licensed house, or under care as a single patient.

Extension of powers to take boarders in houses (a).

### *Admission and Visitation of Patients.*

Sects. 19 to 21, inclusive, relate to county asylums, etc., and will be found *ante* (tit. "*County Asylums*"), 672, 673.

Sect. 22. When a person has been found lunatic by inquisition an order, signed by the committee appointed by the Lord Chancellor, and having annexed thereto an office copy of the order appointing such committee, shall be a sufficient authority for the reception of such person into any asylum, hospital, licensed house, or other house, without any further order or any such medical certificates as are required by section ninety of the "Lunacy Act," chapter one hundred (b), and sections four and eight of the "Lunacy Act," chapter ninety-six (c), and the provisions of the section ninety of the "Lunacy Act," chapter one hundred (b), as to the visitation of every single patient once in every two weeks by a physician, surgeon, or apothecary, shall not apply to any person found lunatic by inquisition as aforesaid.

Order for reception and medical visitation of persons found lunatic by inquisition.

Sect. 23. No order for the reception of a private patient into any asylum or registered hospital, licensed, or other house, made in pursuance of the "Lunacy Acts," chapters ninety-six (d) and ninety-seven, or either of them, shall authorize the reception of such patient after the expiration of one calendar month from its date, nor unless the person subscribing such order has himself seen the patient within one month prior to its date, nor unless a statement of the time and place when such person last saw the patient is added to such order.

Persons signing orders for admission to have seen patient within one month.

Sect. 24. The following persons shall be prohibited from signing any certificate or order for the reception of any private patient into any licensed or other house:—

Certain persons prohibited from signing orders for admission.

First. Any person receiving any percentage on or otherwise interested in the payments to be made by or on account of any patient received into a licensed or other house:

\*Second. Any medical attendant as defined by the "Lunacy Act," chapter one hundred.

(a) See 16 & 17 Vict. c. 96, s. 6, *ante*, 716.

(b) See *ante*, 700.

(c) See *ante*, 714, 716.

(d) See 16 & 17 Vict. c. 96, ss. 4, 7, and 8, *ante*, 714, 716.



### 3. *Private Lunatic Asylums.*

Relative of pauper to be named in order of admission.

Sect. 25. Where an order is made, in pursuance of the "Lunacy Acts," or any of them, for the reception of any private or pauper lunatic into any asylum, registered hospital, or licensed house, there shall be inserted in every such order, wherever it be possible, the name and address of one or more of the relations of the lunatic; and in the event of his death it shall be the duty of the clerk of such asylum, the superintendent of such hospital, and the proprietor or superintendent of such licensed house, to send by post notice of his death in a prepaid letter addressed to such relation or one of such relations.

Same order and certificates to justify detention of private patient as pauper.

Sect. 26. The order and certificate required by law for the detention of a patient as a pauper shall extend to authorize his detention, although it may afterwards appear that he is entitled to be classified as a private patient; and the order and certificates required by law for the detention of a patient as a private patient shall authorize his detention, although it may afterwards appear that he ought to be classified as a pauper patient.

Provision as to defective certificates.

Sect. 27. Where any medical certificate upon which a patient has been received into any asylum, registered hospital, licensed or other house, or either of such certificates, is deemed by the commissioners incorrect or defective (*a*), and the same are or is not duly amended to their satisfaction within fourteen days after the reception by the superintendent or proprietor of such asylum, registered hospital, or licensed or other house of a direction or writing from the commissioners requiring amendment of the same, the commissioners or any two of them may, if they see fit, make an order for the patient's discharge.

Transmission of documents to commissioners on admission of patient.

Sect. 28. The documents required by the "Lunacy Act," chapter one hundred, sections fifty-two (*b*) and ninety (*c*), and the "Lunacy Act," chapter ninety-seven, section eighty-nine (*d*), to be sent to the commissioners in lunacy, after two clear days, and before the expiration of seven clear days from the day on which any private patient has been received into any licensed house, registered hospital, or asylum, shall, with the exception of the statement now required to be subjoined to the notice of admission into any asylum, hospital, or licensed house, be transmitted to the said commissioners within one clear day from the day on which any patient has been received into any such house, hospital, or asylum as aforesaid, and the said sections shall, so far as relates to the said documents, other than the said statement, be construed as if the words "one clear day" were substituted therein for the words "after two clear days, and before the expiration of seven clear days;" nevertheless the said excepted statement shall be transmitted as heretofore, save that it shall be separate from the said notice, and shall refer to the order of admission by the date thereof, instead of referring to it as the above notice, and the words referring to the said statement as being subjoined shall be omitted in the said notice.

Visits by commissioners.

Sect. 29. Every licensed house may be visited at any time, and if situate within their immediate jurisdiction shall be visited twice at least in every year by any one or more of the commissioners, in addition to the visits now required to be made by two at least of the commissioners; and if not within the immediate jurisdiction of the commissioners, may be visited at any time, and shall be visited twice at least in every year by one or more of the visitors, in addition to the visits now required to be made by two at least of the visitors.

Every commissioner visiting alone shall have the same powers as two

(*a*) See 16 & 17 Vict. c. 96, s. 11, *ante*, 717; and c. 97, s. 87, *ante*, 636.

(*b*) See *ante*, 659.

(*c*) See *ante*, 700.

(*d*) See *ante*, 636.

commissioners would have under section sixty-one (*a*) of the "Lunacy Act," chapter one hundred; and all the provisions of the said Act contained in sections sixty-three, sixty-four, sixty-five, sixty-six, and sixty-seven (*b*) shall apply to a commissioner or visitor visiting alone, as the case may be, in the same manner as they would apply under the said Act to two or more commissioners or two or more visitors visiting together.

Sect. 30. Any one or more of the commissioners may at any time visit every asylum and hospital for lunatics, and every gaol in which there may be, or alleged to be, any lunatic, in addition to the visits now required or empowered to be made by two at least of the commissioners, and every commissioner so visiting alone shall have the same powers as two or more commissioners would perform and have, in the case of an asylum or gaol, in pursuance of the one hundred and tenth section (*c*) of the "Lunacy Act," chapter one hundred, and in the case of a hospital in pursuance of section sixty-one (*d*) of the "Lunacy Act," chapter one hundred.

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Lunatic  
Asylums.*

Single commissioner to visit asylums and gaols.

Sect. 31. Where upon the visitation of any workhouse by any two or more of the commissioners in lunacy it appears to them that any lunatic or alleged lunatic therein is not a proper person to be kept in a workhouse, they may by an order under their hands direct such lunatic to be received into an asylum, and any order so made shall have the same effect, and be obeyed by the same persons, and subject them to the same penalties in case of disobedience, as an order made by a justice for the reception of a lunatic into an asylum under the sixty-seventh section of the "Lunacy Act," chapter ninety-seven: Provided always, that it shall be lawful for the guardians of the union or parish to which any workhouse belongs to appeal against such order at any time within one calendar month from the making thereof to her Majesty's principal secretary of state for the home department, who shall thereupon exercise the power given to him by section one hundred and thirteen (*e*) of the "Lunacy Act," chapter one hundred, save that he shall not appoint thereunder the commissioners who made the order appealed against, or either of them; and the order in the matter of the secretary of state, made upon the report of the special visitation, shall be binding on all parties concerned.

Power to remove lunatic from workhouse to asylum.

Sects. 32 and 33 relate to the removal of single pauper patients to asylums, and will be found *ante* (tit. "*County Asylums*"), 674.

Sect. 34. The superintendent of every asylum shall, once at the least in each half year, transmit to the guardians of every union and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, a statement of the condition of every pauper lunatic chargeable to such union or parish.

Statement of condition of pauper lunatics to be transmitted to guardians.

Sect. 35. The inquiries authorized to be made under section sixty-four of the "Lunacy Act," chapter one hundred (*f*), or under section ninety-two of the same Act (*g*), and the provisions amending the same, may include inquiries as to the moneys paid to the superintendent or proprietor on account of any lunatic under the care of such superintendent or proprietor.

Amendment of sect. 64 of 8 & 9 Vict. c. 100.

Sect. 36. The proprietor of every licensed house within the jurisdiction of visitors appointed by justices shall, within three days after a visit by the visiting commissioners or commissioner, transmit a true and perfect

Copies of entries of commissioners and visitors.

(*a*) See *ante*, 692.

(*b*) See *ante*, 693, 694.

(*c*) See *ante*, 707.

(*d*) See *ante*, 692.

(*e*) See *ante*, 708.

(*f*) See *ante*, 693.

(*g*) See *ante*, 701.

### 3. *Private Lunatic Asylums.*

copy of the entries made by them or him in the 'Visitors' Book,' the 'Patients' Book,' and the 'Medical Visitation Book' respectively, distinguishing the entries in the several books, to the clerk of the visitors as well as to the commissioners (a), and the copies so transmitted to the clerk of the visitors of all such entries in the 'Visitors' Book' relating to any such licensed house, and made since the grant or last renewal of the licence thereof, shall be laid before the justices on taking into consideration the renewal of the licence to the house to which such entries relate; and every such proprietor as aforesaid who shall omit to transmit as hereinbefore mentioned a true and perfect copy of every or any such entry as aforesaid shall for every such omission forfeit a sum not exceeding ten pounds.

Visiting committee to enter observations in a book respecting dietary, accommodation, etc., of lunatics in work-houses.

Sect. 37. The visiting committee of every union, and of every parish under a board of guardians, and the overseers of every parish not in a union nor under a board of guardians, shall once at the least in each quarter of a year enter in a book to be provided and kept by the master of the workhouse such observations as they may think fit to make respecting the dietary, accommodation, and treatment of the lunatics or alleged lunatics for the time being in the workhouse of their union or parish, and the book containing the observations made in pursuance of this section by the visiting guardians or overseers shall be laid by the master before the commissioner or commissioners on his or their next visit.

### *Miscellaneous Clauses.*

Patients may be permitted to be absent on trial from hospitals and private houses.

Sect. 38. Section eighty-six of the "Lunacy Act," chapter one hundred, and section seventeen of the Act eighteenth and nineteenth Victoria, chapter one hundred and five, shall extend to authorize the proprietor or superintendent of any licensed house or hospital, with such consent, and to be given on such approval as thereby required, to permit any patient to be absent from such hospital or house upon trial for such period as may be thought fit:

Two of the commissioners, as regards any hospital or any licensed house, and two of the committee of governors of any hospital, and two of the visitors of any licensed house, as regards any licensed house within the jurisdiction of visitors, may of their own authority permit any pauper patient therein to be absent from such hospital or house upon trial for such period as they may think fit, and may make or order to be made an allowance to such pauper not exceeding what would be the charge for him in such hospital or house, which allowance shall be charged for him and be payable as if he were actually in such hospital or house, but shall be paid over to him, or for his benefit, as the said commissioners or visitors may direct:

In case any person so allowed to be absent on trial for any period do not return at the expiration thereof, and a medical certificate as to his state of mind certifying that his detention as a lunatic is no longer necessary be not sent to the proprietor or superintendent of such licensed house or hospital, he may at any time within fourteen days after the expiration of the same period be retaken as in the case of an escape.

Penalty on officer conniving at the escape of lunatics.

Sect. 39. If any officer or servant in any hospital or licensed house through wilful neglect or connivance permits any patient to escape from such hospital or licensed house, or secretes or abets or connives at the escape of any patient from such hospital or licensed house, he shall for every such offence incur a penalty not exceeding twenty pounds.

Correspondence of private patients.

Sect. 40. Every letter written by a private patient in any asylum, hospital, or licensed house, or by any single patient, and addressed to the commissioners in lunacy or committee, or in the case of houses within

(a) See 8 & 9 Vict. c. 100, s. 67, *ante*, 694.

the jurisdiction of visitors to the visitors or any of them, shall, unless special regulations to the contrary have been given by such commissioners or visitors, be forwarded unopened.

Every letter written by a private patient in any asylum, hospital, or licensed house, or by any single patient, and addressed to any person other than the commissioners or committee or visitors or one of them, shall be forwarded to the person to whom it is addressed, unless the superintendent in the case of an asylum or hospital, the proprietor in the case of a licensed house, and the person having the charge of a single patient in the case of a single patient, prohibit the forwarding of such letter, by indorsement to that effect under his hand on the letter, in which case he shall lay all letters so indorsed before the visiting commissioners, committee, or visitors, as the case may be, on their next visit.

Any superintendent, proprietor, or person in charge of a single patient failing to comply with the provisions of this section as to laying any letter before the commissioners or committee or visitors that is not forwarded to the address of the person to whom it is directed, or being privy to the detention by any other person of any letter detained in contravention of this section, shall incur a penalty not exceeding twenty pounds in respect of each offence; and any person detaining any letter in contravention of this section shall incur, in respect of each letter so detained, a penalty not exceeding twenty pounds.

Sect. 41. Every person having the care or charge of a single patient shall, in addition to the notice required to be given by the ninetieth section of the "Lunacy Act," chapter one hundred (*a*), before the expiration of seven clear days from the day on which he has taken the patient under his care or charge, transmit to the commissioners a statement of the condition of the patient, according to the form in schedule F. annexed to the said last-mentioned Act, such statement to be signed by the physician, surgeon, or apothecary visiting the patient in pursuance of the ninetieth section of the "Lunacy Act," chapter one hundred.

Statement as to condition of single patients.

If any person having the care or charge of a single patient fails to transmit such statement as aforesaid within such time as is required by this section, he shall be guilty of a misdemeanour.

Sect. 42. In the case of single patients the commissioners may from time to time make regulations as to the form of and the particulars to be entered in the 'Medical Visitation Book,' required to be kept by the ninetieth section of the "Lunacy Act," chapter one hundred (*b*), and if the person having the care or charge of a single patient fails to comply with the regulations so made, he shall in respect of each offence incur a penalty not exceeding five pounds.

Commissioners empowered to prescribe forms, etc., of medical visitation book.

Sect. 43. If there be no person capable or qualified, under section seventy-two or section seventy-three (*c*) of the said "Lunacy Act," chapter one hundred, to direct the discharge or removal of any such patient as therein mentioned from any registered hospital or licensed house, the commissioners may order the discharge or removal of such patient, as they may think fit.

Discharge of a private patient.

Sect. 44. The superintendent of every asylum, and every person having the care or charge of a single patient, shall, in the event of the death of any patient, transmit to the coroner of the county or borough the same statement as is required by law to be transmitted in the case of the death of any patient in any hospital or licensed house (*d*), and if such coroner, after receiving such statement, thinks that any reasonable suspicion attends the cause and circumstances of the death of such patient, he shall summon a jury to inquire into the circumstances of such death.

Report to coroner of death of single patient.

(*a*) See *ante*, 700.

(*b*) See *ante*, 700.

(*c*) See *ante*, 696.

(*d*) See 16 & 17 Vict. c. 96, s. 19, *ante*, 719.

Magistrates.

Any superintendent or person in charge who makes default in complying with the requisitions of this section shall be guilty of a misdemeanour.

Sect. 45. Relating to the chargeability of pauper lunatics, will be found *ante* (tit. "*County Asylums*"), 675.

Amendment of  
8 & 9 Vict. c.  
100, s. 100, as to  
power of admin-  
istering oaths.

Sect. 46. Any two or more commissioners or visitors, in exercise of the powers given to them by the one hundredth section of the "*Lunacy Act*," chapter one hundred (*a*), may, if they think fit, examine on oath any person appearing before them as a witness, notwithstanding a summons may not have been served on him in pursuance of the said section.

Definition of  
physician, sur-  
geon, or apo-  
thecary.

Sect. 47. The term physician, surgeon, or apothecary, wherever used in the "*Lunacy Acts*," shall mean a person registered under "*The Medical Act*," passed in the session holden in the twenty-first and twenty-second years of the reign of her present Majesty, chapter ninety.

Sect. 48, repealing part of sect. 132 of the 16 & 17 Vict. c. 97, will be found *ante* (tit. "*County Asylums*"), 676.

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SCHEDULE A.

*Form of Licence (b).*

*Know all men, That we, the undersigned justices of the peace, acting in and for in general [or quarter or special] sessions assembled, do hereby certify that A. B. of in the parish of in the county of hath delivered to the clerk of the peace a plan and description of a house and premises proposed to be licensed for the reception of lunatics, situate at in the county of and which has not been previously licensed for that purpose, and hath applied to us for a licence thereof: And whereas the particulars of the said application have been transmitted to the commissioners in lunacy, and their report in reference to the said application has been received, and has been taken into consideration by us; and we, having considered and approved the application, do hereby authorize and empower the said A. B. (he intending or not intending to reside therein) to use and employ the said house and premises for the reception of male [or female, or male and female] lunatics, of whom not more than shall be private patients, for the space of calendar months from this date.*

*Given under our hands and seals, this day of in the year of our Lord one thousand eight hundred and*

*Witness, Y. Z., Clerk of the Peace.*

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SCHEDULE B.

For this schedule see *ante* (tit. "*County and Public Asylums*"), 676.

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## Magistrates.

[5 & 6 Will. 4, c. 76, s. 99; 11 & 12 Vict. c. 42, s. 29; c. 43, s. 33; 21 & 22 Vict. c. 73; 26 & 27 Vict. c. 97.]

As early as 1837 provision was made for the appointment of police magistrates in boroughs; and by a recent Act police magistrates may now be appointed in large towns which are not boroughs.

By the 5 & 6 Will. 4, c. 76, s. 99, if the council of any borough shall think it requisite that a salaried police magistrate or magistrates be appointed within such borough, such council is hereby empowered to

(a) See *ante*, 704.

(b) See 8 & 9 Vict. c. 100, s. 30,

*ante*, 684, and sect. 14 of this Act, *ante*, 729.

make a bye-law fixing the amount of the salary which he or they are to receive in that behalf, and such bye-law so made by any council as aforesaid shall be transmitted to one of his Majesty's principal secretaries of state; and it shall be lawful thereupon for his Majesty, if he shall think fit, to appoint one or more fit persons according to the number fixed in the said bye-law (being barristers-at-law of not less than five years' standing) to be during his Majesty's pleasure police magistrate or magistrates, and a justice or justices of the peace for such borough, and to direct that such sum shall be paid quarterly out of the borough fund of such borough as will be sufficient to pay such yearly salary to each of the justices so assigned as last aforesaid, not exceeding in the whole the salary mentioned in the prayer of such petition, clear of all fees or deductions, as to his Majesty shall seem fit, and the treasurer of such borough shall thereupon pay to each justice so assigned as last aforesaid out of the borough fund of such borough the salary so directed to be paid by four equal quarterly payments, and in the same proportion up to the time of the death of such justice or his ceasing to act under such assignment as aforesaid; Provided that in every case of vacancy of the office of police magistrate in any borough aforesaid, no new appointment of police magistrate in such borough shall be made until the council shall again make application to one of his Majesty's principal secretaries of state in that behalf, and as in the case of the first appointment of a police magistrate in such borough.

By the 26 & 27 Vict. c. 97, entitled "An Act to enable Cities, Towns, and Boroughs of Twenty-five thousand Inhabitants and upwards to appoint Stipendiary Magistrates" [28th July, 1863], after reciting that the execution of the office of justice of the peace within populous cities and places in England and Wales has become difficult and burdensome, the great and increasing extent of the populations therein, and the difficult and important legal questions that arise under various public and local Acts, creating unreasonable demands upon the time of justices: And whereas there is reason to believe that such cities and places would secure the services of stipendiary magistrates for the more speedy and effectual execution of the said office, the better protection of the persons and properties of the inhabitants, and the advantage of the public, if provision were made by authority of Parliament for the appointment of such magistrates: it is enacted as follows:—

Sect. 1. This Act may be cited as "The Stipendiary Magistrates Act, 1863." Short title.

Sect. 2. In the construction of this Act the following words and expressions shall have the meanings hereby assigned to them, unless they be repugnant to or inconsistent with the context or subject matter in connection with which they are used; that is to say,— Interpretation of terms.

The words "city" or "place" shall mean any city or place, not a municipal corporation, wherein the "Public Health Act," "Local Government Act," or "Local Improvement Act" is or shall be in operation, and shall comprise the whole area to which the "Public Health Act," "Local Government Act," or "Local Improvement Act" shall extend, provided there is a population within such area of twenty-five thousand persons; and provided such place is not included in any district for which a stipendiary magistrate is acting by virtue of any Act of Parliament:

The expression "local board" shall mean the board appointed under any of such Acts:

The word "county" shall mean county, riding, parts, liberty, or division:

The word "jurisdiction" shall include the entire area of a city or place to which any of such Acts shall extend:

Magistrates.

This Act shall not extend to the City of London, or to any city or place which is now incorporated or shall be incorporated under the provisions of the 5 & 6 Will. 4, c. 76.

Power to local board to make a bye-law as to salary to be fixed, on which Crown may appoint a justice.

Sect. 3. If any local board of any city or place shall, by a majority of not less than two-thirds of the number of such board, think it expedient that a stipendiary magistrate should be appointed to execute the office of a justice of the peace within any city or place, such local board is hereby empowered, by a like majority, to make a bye-law or minute fixing the amount of the salary which he is to receive in that behalf, subject to the approval of one of her Majesty's principal secretaries of state, and such bye-law or minute shall be transmitted to one of her Majesty's principal secretaries of state, and it shall be lawful thereupon for her Majesty, if she shall think fit, to appoint a fit person, being a barrister-at-law of not less than five years' standing, to be, during her Majesty's pleasure, police magistrate and a justice of the peace for such city or place, and to order that such sum shall be paid quarterly out of the local improvement rate of such city or place as will be sufficient to pay such yearly salary to the said justice so assigned as aforesaid, not exceeding in the whole the salary mentioned in such bye-law or minute so approved as aforesaid, clear of all fees or deductions, as to her Majesty shall seem fit; and the treasurer of such local board shall pay to the justice so assigned as aforesaid, out of the local improvement rates, the salary so directed to be paid, by four equal quarterly payments, and in the same proportion up to the time of the death of such justice or his ceasing to act under such assignment as aforesaid: Provided that in every case of vacancy of the office of police magistrate in any city or place aforesaid no new appointment of police magistrate in such city or place shall be made until the local board, in manner hereinbefore referred to, shall again make application to one of her Majesty's principal secretaries of state in that behalf, and as in the case of the first appointment of a police magistrate in such city or place.

Local board to provide and furnish a police office.

Sect. 4. The local board are hereby authorized and required to provide and furnish a fit and suitable office, to be called the police office of the city or place, for the purpose of transacting the business of the justices of such city or place, and to pay from time to time, out of the local improvement rates, such sums as may be necessary for providing, upholding, and furnishing, and for the necessary expenses of such police office, provided that no room in any house licensed as a victualling house or alehouse shall be used for the purposes of any such police office.

Justice need not be qualified by estate;

Sect. 5. Any person assigned to keep the peace within any city or place under the provisions of this Act shall during the continuance of such assignment execute the duties of a justice of the peace in and for the city and place for which he shall have been so assigned, although he may not have such qualification by estate as is required by law in the case of other persons being justices of the peace for a county, provided that such person be not disqualified by law to act as a justice of the peace for any other cause or upon any other account than in respect of estate, and shall sit and act as a justice of the peace within such jurisdiction as aforesaid on all matters where one or more justices are by law now required either alone or together with any other justice or justices of the peace of the city or place wherein his jurisdiction is situate; and that every summons for the appearance of any person, or warrant to compel such appearance, or warrant for the apprehension of any person charged with any offence, or search warrant issued by any justice of the peace acting in and for any city or place in any matter within his jurisdiction, may be respectively served and executed within any county in which the said city or place shall be situate, or within any distance not exceeding seven miles from such city or place, and within such limits as aforesaid, shall have the same force and effect as if the same had been

originally issued or subsequently endorsed by a justice of the peace having jurisdiction in the place where the same shall be served or executed, any law, statute, charter, or usage to the contrary notwithstanding; and every such summons and warrant shall and may be lawfully served or executed within such limits as aforesaid by the constable or special constable to whom the same shall be directed; Provided nevertheless, that no such person, by virtue of such assignment, shall act as a justice of the peace at any Court of gaol delivery, or general or quarter sessions, or in making or levying any county rate or rate in the nature of a county rate.

but such justice not to sit in Courts of gaol delivery.

Sect. 6. It shall be lawful for such magistrate and he is hereby required to appoint one fit and proper person, being an attorney-at-law, in actual practice as a clerk, to be removable at his pleasure, and as often as there shall be a vacancy in the said office of clerk to the magistrate by death, resignation, removal, or otherwise; and such clerk shall attend (except when prevented by illness or some other sufficient cause, to be allowed by such magistrate, who shall appoint a temporary deputy), at all official meetings and do all such work and transact all such business as is usually done and transacted by justices' clerks; and he and his successors shall be paid such yearly salary as the local board shall appoint, subject to an appeal to the secretary of state, who is hereby empowered finally to determine the amount of the said salary, for his time, trouble, attendance, and expenses in the execution of his said office, by the local board, in four quarterly payments, as hereinbefore directed with reference to the payment of the salary of the said magistrate; but he shall not be concerned, either by himself or partner, in any matter before the said magistrate, or arising out of or consequent thereupon in any other Court, on pain of dismissal. Such clerk shall receive and take all such fees as are authorized to be taken by the clerks to the justices acting for the county within which the said city or place is locally situate: Provided that a copy of the table of fees shall be affixed in the public office of every magistrate appointed under this Act, who may remit any fees, in part or in whole, for reasonable cause, and award such costs as to him shall seem meet to be paid to or by either of the parties to any charge or complaint, whether or not a warrant or summons shall have issued.

Power to magistrate to appoint a clerk, being an attorney-at-law.

Clerk disqualified from acting as attorney in certain cases. As to fees to be taken.

Power to remit fees and award costs.

Sect. 7. Such clerk shall pay over all fees to the treasurer of the local board once every quarter of a year, and shall keep accounts of them in writing, and shall at the same time render to the local board an account thereof. All such fees, together with all fines, penalties, and forfeitures hereinafter referred to, shall be carried by the treasurer to the credit of the local improvement rate; provided that it shall be lawful for the local board, if it should become necessary so to do, from time to time to make a rate or assessment not exceeding one penny in the pound in any one year upon all property rateable to the improvement rate within such city or place for the purpose of raising as much money as, together with the said fees, fines, penalties, and forfeitures, shall be sufficient to pay the salaries of the magistrate and his clerk, the rent and all other expenses of the offices, and of law or other books, printing and stationery, and of all other charges and expenses connected with or incidental to the duties of the magistrate or his clerk, such rate or assessment to be made, levied, and enforced either with and as part of such improvement rate or to be separately assessed, levied, and enforced, and with the same powers and in the same manner as the improvement rate. All fines, penalties, and forfeitures imposed by such magistrate, save and except those made payable to the informer who shall sue for the same, or any party aggrieved, and those recoverable under any Act relating to the customs, excise, or post office, or to trade or navigation, or any branch of her Majesty's revenue, shall be recovered for and adjudged to be paid to the said treasurer of the said local board, and shall be by him

Clerk to pay over fees to treasurer.

Fees received to form one general fund.

Power to local board to make rates for payment of magistrate, etc.

Application of fines and penalties.



**Magistrates.**

As to penalties appropriated under local Acts.

carried to the credit of the improvement rate, and be applied as part thereof: Provided that, if under any local watch Act such fines, penalties, and forfeitures shall have been already appropriated, the same shall be applied as directed by such local Act, anything herein contained to the contrary notwithstanding.

By the 21 & 22 Vict. c. 73, intituled, "An Act to Amend the Law concerning the Powers of Stipendiary Magistrates and Justices of the Peace in certain Cases" [2nd August, 1858], it is enacted as follows:

A stipendiary magistrate may do alone all Acts authorized to be done by two justices.

Sect. 1. Every stipendiary magistrate appointed for any city, town, liberty, borough, place, or district, sitting at a police court or other place appointed in that behalf, shall have power to do alone any act and to exercise alone any jurisdiction which under any law now in force, or under any law not containing an express enactment to the contrary hereafter to be made, may be done or exercised by two justices of the peace, and all the provisions of any Act of Parliament auxiliary to the jurisdiction of such justices shall be applicable also to the jurisdiction of such stipendiary magistrate.

Foregoing enactment to extend to Acts required to be done at petty sessions.

Sect. 2. The authority and jurisdiction given to a stipendiary magistrate by the enactment hereinbefore contained shall extend and apply as well to the cases where the Act or jurisdiction is or hereafter may be expressly required to be done or exercised by justices sitting or acting in petty sessions as to other cases, and any enactment authorizing or requiring persons to be summoned or to appear at such petty sessions shall in the like cases authorize or require persons to be summoned or to appear before the stipendiary magistrate having jurisdiction at the police court or other place appointed for his sitting.

Saving of jurisdiction of quarter sessions and special sessions, and as to licences.

Sect. 3. Nothing hereinbefore contained shall extend to acts to be done or jurisdiction to be exercised at the general or quarter sessions of the peace, or to acts or jurisdiction expressly required (by any existing or future law) to be done or exercised at special sessions, or to any act or jurisdiction in relation to the grant or transfer of any licence.

Saving as to metropolitan police magistrates.

Sect. 4. Nothing hereinbefore contained shall extend, alter, or affect in any manner the powers or authorities of the magistrates appointed or to be appointed to the police courts in the metropolitan police district.

Magistrates acting for places in the metropolitan police district within which no police court is established may commit certain offenders to any gaol in and for the county, etc., in which offence shall have been committed.

Sect. 7. In every case in which any person shall be brought before any police magistrate, or any two magistrates acting within the said metropolitan police district, for any place within which no police Court shall have been established, for any offence under the twenty-fourth section of 2 & 3 Vict. c. 71, such police magistrate, or such magistrates acting in and for such place, may hear and determine the matter, and in case of conviction may commit the offender to be imprisoned in any gaol or house of correction in and for the county, liberty, or place in which such offence shall have been committed, though not within the said metropolitan police district, and with or without hard labour for any time not exceeding two calendar months, and in their discretion without the infliction of any fine in default of payment of which such imprisonment might be adjudged.

Stipendiary magistrate may appoint a deputy with approval of secretary of state.

Sect. 13. It shall be lawful for any stipendiary magistrate, with the approval of the secretary of state for the home department, to appoint a deputy, who shall have practised as a barrister-at-law for at least seven years, to act for him for any time or times not exceeding six weeks in any consecutive period of twelve calendar months; and every deputy so appointed, during the time for which he shall be so appointed, shall have all the powers and perform all the duties of the stipendiary magistrate for whom he shall have been so appointed.

Power to appoint county

Sect. 14. It shall be lawful for her Majesty to appoint any stipendiary

magistrate acting for any city, town, liberty, borough, or place in England or Wales to be a magistrate of any one of the police courts of the metropolitan police district, although such stipendiary magistrate shall not have practised as a barrister during at least seven years then last past, nor shall have practised as a barrister for four years then last past having previously practised as a certificated special pleader for three years below the bar.

Maintenance.

stipendiary magistrates to be magistrates of the metropolitan police courts.

## Maim.

Maim is such a hurt of any part of a man's body, whereby he is rendered less able, in fighting, either to defend himself or annoy his adversary: for the members of every subject are under the safeguard and protection of the law, to the end a man may serve his king and country when occasion shall be offered. (1 Hawk. c. 44; s. 1; 4 Bl. Com. 205.)

What it is.

The cutting off, or disabling, or weakening a man's hand or finger, or striking out his eye or foretooth, or castrating him, are said to be maims; but the cutting off his ear, or nose, was not esteemed as a maim at the common law, because it does not weaken, but only disfigures him. (1 Hawk. c. 44, s. 2.)

What not a maim.

A person who maims himself, that he may have the more colour to beg, may be indicted and fined. (1 Inst. 127.)

Cheats by maim.

And by the like reason a person who disables himself, that he may not be pressed for a soldier.

And so of the party by whom it was effected at the other's desire. (1 Hale, 412; 1 East's P. C. 396; 1 Inst. 127.)

It is said, anciently castration was punished with death, and other maims with the loss of member for member: but afterwards, no maim was punished in any case with the loss of life or member, but only with fine and imprisonment. (1 Hawk. c. 44, s. 2.)

Castration.

See further, as to the offence of maliciously maiming a person, tit. "*Malicious Injuries to the Person*," post.

Malicious Injuries.

As to maiming cattle, see tit. "*Animals*," Vol. I., and tit. "*Malicious Injuries to Property*," post.

Maiming cattle.

## Maintenance.

Buying of titles belongeth not to this place, but is treated of under a title of its own, viz., "*Buying of Titles*," Vol. I.

### I. Of Maintenance in General, p. 712.

[1 Edw. 3, st. 2, c. 14; 20 Edw. 3, c. 4; 1 Rich. 2, c. 4; 32 Hen. 8, c. 9.]

I. *Of Maintenance in General.*

II. *Of Champerty in particular*, p. 743.

[3 Edw. 1, c. 25; 28 Edw. 1, c. 11; 33 Edw. 1, st. 2; 33 Edw. 1, st. 3; 1 Rich. 2, c. 9; 31 Eliz. c. 5.]

III. *Of Embracery of Jurors*, p. 745.

[32 Hen. 8, c. 9; 6 Geo. 4, c. 50, s. 61.]

I. *Of Maintenance in General.*

Maintenance,  
what.

Maintenance (*manu tenere*) is an unlawful taking in hand or upholding of quarrels or suits to the disturbance or hindrance of common right. (1 Hawk. c. 83, s. 1; 4 Bl. Com. 134.)

And it is twofold, technically termed *ruralis et curialis*.

In the country.

One in the *country*; as where one assists another in his pretensions to certain lands, by taking or holding the possession of them for him by force or subtlety; or where one stirs up quarrels and suits in the country, in relation to matters wherein he is no way concerned: and this kind of maintenance is punishable at the Queen's suit by fine and imprisonment, whether the matter in dispute any way depended in plea or not: but it is said not to be actionable. (*Id.* ss. 1, 2.)

In courts of  
justice.

Another in the *courts of justice*; where one officiously intermeddles in a suit depending in any such court, which no way belongs to him, by assisting either party with money or otherwise in the prosecution or defence of any such suit. (1 Hawk. c. 83, ss. 1, 2.)

Of this second kind of maintenance, there are three species:—

*First*, where one maintains another, without any contract to have part of the thing in suit; which generally goes under the common name of *maintenance*.

*Secondly*, where one maintains one side to have part of the thing in suit; which is called *champerty*.

*Thirdly*, where one laboureth a jury; which is called *embracery*. (*Id.* s. 3.)

But it seemeth to be agreed, that wherever any persons claim a common interest in the same thing, as in a way, churchyard, or common, by the same title, they may maintain one another in a suit relating to the same. (1 Hawk. c. 83, s. 18; and see *Williamson v. Henley*, 6 Bing. 299; 3 Moo. & P. 731; see also *Jacob's Rep.* 427; *Gwyllim's Tithe Cases*, 1381.)

Also, that whoever is any way of kin or affinity to the party may counsel and assist him, but that he cannot justify the laying out of any of his own money in the cause, unless he be either father, son, or heir apparent. (*Id.* s. 20.)

Also, that any one in charity may lawfully give money to a poor man, to enable him to carry on his suit. (*Id.* s. 26; 4 Bl. Com. 135; *Vin. Ab. Maintenance*, 2; and see further, 1 Russ. on Cr. 176; 6 Bing. 299; 3 Moo. & P. 731; *Bell v. Smith*, 7 D. & R. 846; 5 B. & C. 188, S. C.)

It has been held that an agreement not to oppose a railway bill in Parliament is not illegal. (See *Edwards v. Grand Junction Railway*, 7 Sim. 337, affirming 1 Myl. & C. 650; *Simpson v. Lord Howden*, 1 Jurist, 703; reversing S. C. in 1 Reeve, 583.)

How punishable  
by the common  
law.

It seemeth that all maintenance is not only *malum prohibitum* by statute, but is also *malum in se*, and strictly prohibited by the common law, as having a manifest tendency to oppression; and, therefore, it is said that all offenders of this kind are not only liable to an action of maintenance at the suit of the party grieved, wherein they shall render

such damages as shall be answerable to the injury done to the plaintiff, but also that they may be indicted as offenders against public justice, and adjudged thereupon to such fine and imprisonment as shall be agreeable to the circumstances of the offence. Also, it seemeth that a court of record may commit a man for an act of maintenance done in the face of the court (2 *Inst.* 212; 1 *Hawk.* c. 83, s. 36; and see *Pechell v. Watson*, 8 *M. & Wels.* 691); wherein the plaintiff recovered damages in an action for maintenance; and see the form of declaration there, which was held good after several objections raised against it.

2. *Of Champerty in Particular.*

By the 1 *Edw.* 3, st. 2, c. 14, no person shall take upon him to maintain quarrels, nor parties in the country, to the disturbance of the common law.

How punishable by statute.

By the 20 *Edw.* 3, c. 4, none shall take in hand quarrels other than their own, nor the same maintain, by them nor by other, for gift, promise, amity, favour, doubt, fear, nor other cause, in disturbance of law and hindrance of right.

By the 1 *Rich.* 2, c. 4, none shall take or sustain any quarrel by maintenance in the country, nor elsewhere, on pain, if he is a great officer, as the king by the advice of the lords shall ordain: if he is a lesser officer, he shall forfeit his office, and be imprisoned and ransomed at the king's will; and all other persons, on pain of imprisonment and ransom at the king's will.

And by the 32 *Hen.* 8, c. 9, s. 3, no person shall unlawfully maintain or procure any unlawful maintenance in any action, demand, or complaint, in any court having power to hold plea of lands; nor shall unlawfully retain any person for maintenance of any plea to the disturbance or hindrance of justice, on pain of 10*l.* (a), half to the king, and half to him that shall sue within one year.

*Unlawfully maintain.*]—It seemeth that in an information on this statute, it is not sufficient to say that the defendant maintained the party, without adding that he did it *unlawfully*. (1 *Hawk.* c. 83, s. 45.)

*Having Power to hold Plea of Lands.*]—It is said to have been adjudged, that maintenance of a suit in a spiritual court is neither within this nor any other statute concerning maintenance. (*Id.* c. 83, s. 46.)

*To hold Plea.*]—It hath been holden that in an information on this statute, it is necessary to show that a plea was depending; and, therefore, that it is not sufficient to say that a bill was exhibited. (1 *Hawk.* c. 83, s. 47.)

These statutes are only declaratory of the common law, with additional penalties. (*Pechell v. Watson*, 8 *M. & W.* 691.)

The statutes declaratory only of the common law.

## II. Of Champerty in Particular.

Champerty (from *campi parte*) is the *unlawful maintenance of a suit, in consideration of some bargain to have part of the lands or things in dispute, or part of the gains*. (1 *Hawk.* c. 84, s. 1; 33 *Edw.* 1, st. 2; and see *Williams v. Protheroe*, 5 *Bing.* 309.)

What it is.

Every champerty is maintenance, but every maintenance is not champerty; for champerty is but a *species* of maintenance, which is the *genus*. (2 *Inst.* 208.)

To constitute champerty, there must either be a suit pending or a stipulation for the commencement of one. (*Sprye v. Porter*, 7 *El. & Bl.* 58; 26 *L. J., Q. B.* 64.)

Where it was agreed between the seller and buyer of an estate, that

(a) This penalty would seem to be increased to 40*l.* by the 5 *Eliz.* c. 9, s. 3.

2. Of Champerty in Particular.

the purchaser, bearing the expense of certain suits commenced by the seller against an occupier for arrears of rent, should have the rent to be so recovered, and any sum that could be recovered for dilapidations; and that the purchaser, bearing the expenses, might use the seller's name in actions he might think fit to commence against the occupier for arrears of rent or dilapidations: it was held, such agreement was not void as savouring of champerty. (*Williams v. Protheroe*, 5 Bing. 309; 2 M. & P. 779, S. C.)

But, where a party covenants to use his best exertions and influence to procure evidence, whereby A. B. would be enabled to recover a large sum of money, in consideration of A. B. paying to him one-eighth share of the sum so recovered, this was held clearly to amount to the offence of champerty, for it was a contract for the purchase of an interest in a lawsuit, by the party having stipulated, not, indeed, to pay money for such interest, but to do what was still more calculated to prevent the fair and impartial administration of justice, namely, to procure evidence to support the litigated claim of A. B. (*Stanley v. Jones*, 7 Bing. 369; 5 Moo. & P. 193, S. C.)

Dealing with client.

In a late case, agreements entered into between an attorney and his client, for the purchase by the attorney, at an under price, of estates to which the client had good title, but of which he was not in possession, were set aside for fraud and maintenance. (*Jones v. Thomas*, 2 Y. & Coll. 428.)

How punishable by the common law.

Champerty was an offence at the common law, and as such is punishable in like manner as hath been expressed in treating of maintenance in general. (2 Inst. 208.)

How punishable by statute.

By the 3 Edw. 1, c. 25, no officer of the king, by himself nor by other, shall maintain pleas, suits, or other matters hanging in the king's courts, for lands, tenements, or other things, for to have part or profit thereof, by covenant made between them; and he that doth shall be punished at the king's pleasure.

[By *Covenant made*.]—That is, by agreement either by word or writing; for albeit, in the common sense, a covenant is taken for an agreement by writing, yet in a larger sense it is taken (as it is here), for an agreement by writing or by word. (2 Inst. 209.)

By the 28 Edw. 1, c. 11, no person whatsoever, for to have part of the thing in plea, shall take upon him the business that is in suit, nor shall any upon such covenant give up his right to another; on pain that the taker shall forfeit to the king the value of the part he has purchased for such maintenance. But no person shall be prohibited hereby to have counsel of pleaders, or of men learned in the law, for their fee; or of his parents and next friends.

By the 33 Edw. 1, st. 3, any person who shall take for maintenance or the like bargain, any suit or plea against another, he and also they who consent thereto shall be imprisoned three years, and make fine at the king's pleasure. (*Vide Tomlins's Statutes*, vol. i. 225.)

And by the 1 Rich. 2, c. 9, a feoffment of lands, or gift of goods, for maintenance, shall be void, and the person disseised shall recover the lands against the first disseisors with double damages, without having any regard to such alienations.

[*Shall be void*.]—But it is said that it shall only be void with regard to him that hath right, and not between the feoffor and feoffee. (1 Inst. 369.)

And by the 31 Eliz. c. 5, s. 4, the offence of champerty may be laid in any county, at the pleasure of the informer.

### III. Of Embracery of Jurors.

What it is.

It seems clear, that any attempt whatsoever to corrupt or influence or instruct a jury, or any way to incline them to be more favourable to the one side than to the other, by money, promises, letters, threats, or persuasions, is a proper act of embracery, whether the juror on whom such attempt is made give any verdict or not, or whether the verdict given be true or false. (1 *Hawk.* c. 85, s. 1.)

And the law so far abhors all corruption of this kind, that it prohibits everything which has the least tendency to it, what specious pretence soever it may be covered with; and, therefore, it will not suffer a mere stranger so much as to labour a juror to appear and act according to his conscience. (*Id.* c. 85, s. 2.)

But any person who may justify any other act of maintenance may safely labour a juror to appear and give a verdict according to his conscience; but no one whatsoever can justify the labouring a juror not to appear. (*Id.* c. 85, s. 6.)

There is no doubt but that offences of this kind do subject the offender either to an indictment or action, in the same manner as all other kinds of unlawful maintenance do by the common law. (*Id.* c. 85, s. 7.)

How punishable  
by the common  
law.

By the 32 Hen. 8, c. 9, ss. 3, 6, no person shall embrace any jurors on pain of 10*l.* (a), half to the king, and half to him that shall sue within a year.

How by statute.

And by the 6 Geo. 4, c. 50, s. 61, embracers and corrupt jurors are made punishable by fine and imprisonment; see the section, *ante*, 103. The 38 Edw. 3, st. 1, c. 12, relative to the penalties for embracery, is repealed by that Act.

— } The jurors for our lady the Queen upon their oath present, that A. O.,  
to wit. } late of                    in the county of                    , yeoman, on the                    day of  
                  , in the                    year of the reign of our lady the now Queen Victoria,  
did unjustly and unlawfully maintain and uphold a certain action which was then  
depending in the court of our said lady the Queen before the Queen herself [or, in C. P.  
“in the court of our lady the Queen before her justices of the bench,” or, in the  
Exchequer, “in the court of our lady the Queen before the barons of her Exchequer,  
at Westminster,”] between A. P., plaintiff, and A. D., defendant, in an action of  
debt on the behalf of the said A. P. against the said A. D., contrary to the form of  
the statute in such cases made and provided, and to the manifest hindrance and dis-  
turbance of justice, and in contempt of our said lady the Queen and her laws, and  
to the great damage of the said A. D., and against the peace of our said lady the  
Queen, her crown and dignity.

Indictment for  
maintenance.

## Malicious Injuries to the Person.

The principal Act now in force relative to malicious injuries to the person is the 24 & 25 Vict. c. 100.

For the offences of murder and manslaughter and the provisions of the above Act relating thereto (sects. 1-10), see tit. “Homicide,” Vol. II.

For damaging buildings by the explosion of gunpowder with intent to commit murder (sect. 12), see tit. “Gunpowder,” Vol. II.

(a) See note (a), *ante*, 743.

1. *General  
Clauses of  
the 24 & 25  
Vict. c. 100.*

For setting fire to a ship, etc., with intent to commit murder (sect. 13), see tit. "*Ship*," Vol. V.

For sending letters threatening to murder (sect. 16), see tit. "*Threatening Letters*," Vol. V., and tit. "*Homicide*," Vol. II.

For maliciously impeding another in his endeavour to save his own life or that of another in cases of ships in distress, etc. (sect. 17), see tit. "*Wreck*," Vol. V.

For masters refusing or neglecting to provide food, etc., for their apprentice or servant (sect. 26), see tit. "*Assault*," Vol. I.

For abandoning or exposing children (sect. 27), see tits. "*Assault*" and "*Children*," Vol. I.

For setting spring-guns, etc. (sect. 31), see tit. "*Game*," Vol. II., sub-sect. "*Mode of Preventing Trespasses*."

For malicious acts done to any railway, etc., with intent to injure any person, etc. (sects. 32-34), see tit. "*Railways*," Vol. V.

For furious driving (sect. 35), see tit. "*Furious Driving*," Vol. II.

For assaults of various kinds (sects. 36-47), see tits. "*Assaults*" and "*Assaults in Particular Cases*," Vol. I.

For rape (sect. 48), see tit. "*Rape*," Vol. V.

For offences of a similar nature against children (sects. 49-52), see tit. "*Children*," Vol. I.

For abduction and defilement of women (sects. 53-55), see tit. "*Abduction*," Vol. I.

For child-stealing (sect. 56), see tit. "*Children*," Vol. I.

For bigamy (sect. 57), see tit. "*Bigamy*," Vol. I.

For attempts to procure abortion (sects. 58, 59), see tit. "*Abortion*," Vol. I.

For unnatural offences (sects. 61-63), see tit. "*Sodomy*," Vol. V., and as to assaults with intent to commit such offences (sect. 62), see tit. "*Assaults in Particular Cases*," Vol. I.

For making gunpowder to commit offences and searching for the same (sects. 64, 65), see tit. "*Gunpowder*," Vol. II.

The subjects treated of under the present title are as follows:—

I. *General Clauses of the 24 & 25 Vict. c. 100, ss. 66-79, pp. 746-749.*

II. *Poisoning, Shooting, Wounding, Suffocating, etc., sects. 11, 14, 15, 18, 19, 20, 21, 22, 23, 24, 25, pp. 749-758.*

III. *Intending to murder or to cause grievous bodily harm, etc., by the explosion of gunpowder, etc., sects. 28-30, pp. 758, 759.*

IV. *Murder of or concealing the birth of a child, sect. 60, pp. 759-763.*

V. *Forms, pp. 764-766.*

## I. General Clauses of the 24 & 25 Vict. c. 100.

A person loitering at night, and suspected of any felony against this Act, may be apprehended.

By the 24 & 25 Vict. c. 100, s. 66, any constable or peace officer may take into custody, without a warrant, any person whom he shall find lying or loitering in any highway, yard, or other place during the night, and whom he shall have good cause to suspect of having committed or being about to commit any felony in this Act mentioned, and shall take

such person as soon as reasonably may be before a justice of the peace, to be dealt with according to law.

See the 24 & 25 Vict. c. 97, s. 57, *post*, tit. "*Malicious Injuries to Property*."

See also tit. "*Arrest*," Vol. I.

By sect. 67, in the case of every felony punishable under this Act, every principal in the second degree, and every accessory before the fact, shall be punishable in the same manner as the principal in the first degree is by this Act punishable; and every accessory after the fact to any felony punishable under this Act (except murder) shall be liable to be imprisoned for any term not exceeding two years, with or without hard labour; and every accessory after the fact to murder shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour; and whosoever shall counsel, aid, or abet the commission of any indictable misdemeanour punishable under this Act shall be liable to be proceeded against, indicted, and punished as a principal offender.

See tit. "*Accessories*," Vol. I.

By sect. 68, all indictable offences mentioned in this Act which shall be committed within the jurisdiction of the Admiralty of England or Ireland shall be deemed to be offences of the same nature and liable to the same punishments as if they had been committed upon the land in England or Ireland, and may be dealt with, inquired of, tried, and determined in any county or place in England or Ireland in which the offender shall be apprehended or be in custody, in the same manner in all respects as if they had been actually committed in that county or place; and in any indictment for any such offence, or for being an accessory to such an offence, the venue in the margin shall be the same as if the offence had been committed in such county or place, and the offence shall be averred to have been committed "on the high seas:" Provided that nothing herein contained shall alter or affect any of the laws relating to the government of her Majesty's land or naval forces.

One who standing on the shore shoots at and kills a person in a boat on the sea is triable under this section. (*R. v. Combes*, 1 East, P. C. 367.)

See the precisely similar section of the 24 & 25 Vict. c. 96, s. 115, *ante*, 296, tit. "*Larceny*."

See also tit. "*Admiralty Court*," Vol. I.

By sect. 69, whenever imprisonment, with or without hard labour, may be awarded for any indictable offence under this Act, the Court may sentence the offender to be imprisoned, or to be imprisoned and kept to hard labour, in the common gaol or house of correction.

By sect. 70, whenever solitary confinement may be awarded for any offence under this Act, the Court may direct the offender to be kept in solitary confinement for any portion or portions of any imprisonment, or of any imprisonment with hard labour, which the Court may award, not exceeding one month at any one time, and not exceeding three months in any one year; and whenever whipping may be awarded for any offence under this Act, the Court may sentence the offender to be once privately whipped, and the number of strokes and the instrument with which they shall be inflicted shall be specified by the Court in the sentence.

1. *General  
Clauses of  
the 24 & 25  
Vict. c. 100.*

Punishment of  
principals in the  
second degree,  
and accessories.

Offences com-  
mitted within  
the jurisdiction  
of the Admiralty.

Hard labour in  
gaol or house of  
correction.

Solitary confine-  
ment and whip-  
ping.



1. *General  
Clauses of  
the 24 & 25  
Vict. c. 100.*

Fine, and sureties for keeping the peace; in what cases.

By sect. 71, whenever any person shall be convicted of any indictable misdemeanour punishable under this Act, the Court may, if it shall think fit, in addition to or in lieu of any punishment by this Act authorized, fine the offender, and require him to enter into his own recognizances, and to find sureties, both or either, for keeping the peace and being of good behaviour; and in case of any felony punishable under this Act otherwise than with death the Court may, if it shall think fit, require the offender to enter into his own recognizances and to find sureties, both or either, for keeping the peace, in addition to any punishment by this Act authorized: Provided that no person shall be imprisoned for not finding sureties under this clause for any period exceeding one year.

No *certiorari*, etc.

By sect. 72, no summary conviction under this Act shall be quashed for want of form, or be removed by *certiorari* into any of her Majesty's superior Courts of record; and no warrant of commitment shall be held void by reason of any defect therein, provided it be therein alleged that the party has been convicted, and there be a good and valid conviction to sustain the same.

Guardians and overseers may be required to prosecute in certain cases of offences against this Act.

By sect. 73, where any complaint shall be made of any offence against section twenty-six of this Act, or of any bodily injury inflicted upon any person under the age of sixteen years, for which the party committing it is liable to be indicted, and the circumstances of which offence amount, in point of law, to a felony, or an attempt to commit a felony, or an assault with intent to commit a felony, and two justices of the peace before whom such complaint is heard shall certify under their hands that it is necessary for the purposes of public justice that the prosecution should be conducted by the guardians of the union or place, or, where there are no guardians, by the overseers of the poor of the place in which the offence shall be charged to have been committed, such guardians or overseers, as the case may be, upon personal service of such certificate or a duplicate thereof upon the clerk of such guardians or upon any one of such overseers, shall conduct the prosecution, and shall pay the costs reasonably and properly incurred by them therein (so far as the same shall not be allowed to them under any order of any Court) out of the common fund of the union, or out of the funds in the hands of the guardians or overseers, as the case may be; and where there is a board of guardians, the clerk or some other officer of the union or place, and where there is no board of guardians, one of the overseers of the poor, may, if such justices think it necessary for the purposes of public justice, be bound over to prosecute.

Costs of prosecution.

Clerk of guardians may be bound over to prosecute.

See also tit. "*Assaults in Particular Cases*," Vol. I.

On a conviction for assault the Court may order payment of the prosecutor's costs by the defendant.

By sect. 74, where any person shall be convicted on any indictment of any assault, whether with or without battery and wounding, or either of them, such person may, if the Court think fit, in addition to any sentence which the Court may deem proper for the offence, be adjudged to pay to the prosecutor his actual and necessary costs and expenses of the prosecution, and such moderate allowance for the loss of time as the Court shall by affidavit or other inquiry and examination ascertain to be reasonable; and unless the sum so awarded shall be sooner paid, the offender shall be imprisoned for any term the Court shall award, not exceeding three months, in addition to the term of imprisonment (if any) to which the offender may be sentenced for the offence.

See *post*, sects. 75, 77.

Such costs may be levied by distress.

By sect. 75, the Court may, by warrant under hand and seal, order such sum as shall be so awarded to be levied by distress and sale of the goods and chattels of the offender, and paid to the prosecutor, and that the surplus, if any, arising from such sale, shall be paid to the owner;

and in case such sum shall be so levied the imprisonment awarded until payment of such sum shall thereupon cease.

2. *Poisoning, etc.*

By sect. 76, every offence hereby made punishable on summary conviction may be prosecuted in England in the manner directed by the Act of the session holden in the eleventh and twelfth years of Queen Victoria, chapter forty-three, and may be prosecuted in Ireland before two or more justices of the peace, or one metropolitan or stipendiary magistrate, in the manner directed by the Act of the session holden in the fourteenth and fifteenth years of Queen Victoria, chapter ninety-three, or in such other manner as may be directed by any Act that may be passed for like purposes; and all provisions contained in the said Acts shall be applicable to such prosecutions in the same manner as if they were incorporated in this Act: Provided that nothing in this Act contained shall in any manner alter or affect any enactment now in force relating to procedure in the case of any offence punishable on summary conviction within the City of London or the metropolitan police district, or the recovery or application of any penalty or forfeiture for any such offence.

Summary proceedings in England may be under the 11 & 12 Vict. c. 43, and in Ireland under the 14 & 15 Vict. c. 93.

Except in London and the metropolitan police district.

See tit. "*Sessions, Petty*," Vol. V.

By sect. 77, the Court before which any misdemeanour indictable under the provisions of this Act shall be prosecuted or tried, may allow the costs of the prosecution in the same manner as in cases of felony; and every order for the payment of such costs shall be made out, and the sum of money mentioned therein paid and repaid, upon the same terms and in the same manner in all respects as in cases of felony.

The costs of the prosecution of misdemeanours against this Act may be allowed.

As to costs generally, see tit. "*Costs*," Vol. I.

The words "indictable under the provisions of this Act" exclude the case of a common assault. If, however, the justices before whom a case of common assault is brought are of opinion that it is a fit subject for prosecution by indictment, etc., the Court by whom the indictment is tried have power to order costs and expenses of the prosecutor and witnesses, together with compensation for their trouble and loss of time, in the same manner as in cases of felony. (See the 14 & 15 Vict. c. 55, s. 3.)

See also tit. "*Assault*," Vol. I.

Where the prosecution for an assault terminates in a conviction, the defendant may be ordered to pay costs to the prosecutor or in default be imprisoned, sect. 74, *ante*, 748.

Sect. 78. Nothing in this Act contained shall extend to Scotland, except as hereinbefore otherwise expressly provided.

Act not to extend to Scotland.

Sect. 79. This Act shall commence and take effect on the first day of November, 1861.

Commencement of Act.

## II. **Poisoning, Shooting or Wounding, Suffocating, etc.**

By 24 & 25 Vict. c. 100, s. 11, whosoever shall administer to or cause to be administered to or to be taken by any person, any poison or other destructive thing, or shall by any means whatsoever wound or cause any grievous bodily harm to any person, with intent in any of the cases aforesaid to commit murder, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement.

Poisoning, stabbing, wounding, etc., with intent to murder.

As to attempts to administer poison, see sect. 14, *post*, 753.

2. *Poisoning, etc.*

Administering poison so as to endanger life or inflict grievous bodily harm.

By sect. 23, whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing so as thereby to endanger the life of such person, or so as thereby to inflict upon such person any grievous bodily harm shall be guilty of felony, and being convicted thereof shall be liable at the discretion of the Court to be kept in penal servitude for any term not exceeding ten years, and not less than three [five] years, or to be imprisoned for any term not exceeding two years with or without hard labour."

Administering poison with intent to injure and annoy.

By sect. 24, whosoever shall unlawfully and maliciously administer to or cause to be administered to or taken by any other person any poison or other destructive or noxious thing, with intent to injure, aggrieve, or annoy such person, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years with or without hard labour.

By sect. 25 it is provided that upon an indictment for a felony under sect. 23 the jury may find the prisoner guilty of a misdemeanour under sect. 24.

The offence under sect. 11 is not triable at the quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

If the charge be for wounding, and the intent to murder cannot be established, the defendant may still be found guilty of unlawfully wounding. (14 & 15 Vict. c. 19, s. 5.)

What a poisoning.

Where a servant put poison into a coffee-pot which contained coffee, and when her mistress came down to breakfast, told the mistress that she had put the coffee-pot there for her (the mistress's) breakfast, and the mistress drank the poisoned coffee, it was held that this was "a causing the poison to be taken" within the former Act, and the servant is therefore indictable under it. (*R. v. Harley*, 4 C. & P. 369.) It should also seem from the same case that this is also an "administering" within the former Act; as, to constitute an administering, it is not necessary that the poison should be delivered by the hand of the party. And where the prisoner, having mixed corrosive sublimate with sugar, put it into a parcel, directing it to Mrs. Daws, Townhope, and left it on the counter of a tradesman, who sent it to Mrs. Davis, who used some of the sugar, *Gurney*, B., held it to be an administering; for, although it was intended for Mrs. Daws, yet, as it found its way to Mrs. Davis, it was as much within the Act as if it had been intended for Mrs. Davis. (*R. v. Lewis*, 6 C. & P. 161.) The prisoner was indicted on the 43 Geo. 3 for administering poison to E. D. with intent to murder her. The proof was, that the prisoner gave her a bit of a cake which contained arsenic and sulphate of copper. She put this into her mouth and spit it out again, but did not swallow any part of it. This was held by the twelve judges not to be an administering within the meaning of the former Act, as the poison was not swallowed. (*R. v. Cadman*, cor. Twelve Judges, Car. C. L. 237 (a). But such facts would make out a case of attempting to administer the poison within the meaning of the 14th section of the present Act. In *Reg. v. Ryan*, 2 M. & Rob. 213, *Parke*, B., after consulting *Alderson*, B., expressed an opinion that an indictment for causing poison to be taken by A., with intent to murder A., was not sustained by evidence showing that the poison, though taken by A., was intended for another person; and doubted the propriety of the decision in *R. v. Lewis*: and accordingly, after the defendant had been convicted, he directed a fresh indictment to be preferred, charging the intent to be

(a) This case is also reported in *R. & M. C. C. R.* 114; but, according to

*R. v. Harley*, (4 C. & P. 369), such report is inaccurate.

generally "to commit murder;" upon which the defendant was again tried, convicted, and sentenced. But see *post*, 755.

2. *Poisoning, etc.*

Administering poison with intent to murder was within the 1 Vict. c. 85, s. 2, though the poison was in such a state as to render it innocuous. (*Reg. v. Cluderay*, 1 Den. C. C. 514.)

The word *wound* includes incised wounds, punctured wounds, lacerated wounds, contused wounds, and gun-shot wounds. (*Jerv. Arch. C. L.* 9th ed. 459.)

What a wound-  
ing.

It is not necessary that the prosecutor should be cut in a vital part; for the question is not what the wound is, but what wound was intended. (*R. v. Hunt*, R. & M. 93; *R. v. Griffith*, 1 C. & P. 298.) To constitute a *wounding* within the statute, it is necessary that the continuity of the skin should be broken. Upon an indictment for wounding Best, it appeared that the defendants struck him with an iron sticking bar, wrenched from a block used for making pins, and with a hammer, giving him tremendous blows across his shoulders, on his loins, and on other parts of his body, and broke his collar bone, and injured the end of the bone, but there was no evidence of an incised wound, or that the skin was broken: *Park, J.*, was of opinion, at the trial, that this was a wounding within the statute, the word wound being introduced for the purpose of destroying the distinction which it was necessary to make upon the repealed statute between incised and contused wounds: the defendants having been convicted, it was holden by nine judges, *Bayley, Park, and Garrow, contra*, that this was not a wounding within the statute. (*R. v. Wood & M'Mahon*, R. & M. C. C. 278; 4 C. & P. 381, S. C. And see *R. v. M'Loughlin*, 8 C. & P. 635; *R. v. Becket*, 1 M. & Rob. 526.) If the skin be broken internally it will suffice (*R. v. Smith*, 8 C. & P. 173); or if there be a rupture (*Reg. v. Waltham*, 3 Cox C. C. 442); or even, it seems, extravasation of the blood. (*Reg. v. Warman*, 1 Den. C. C. 183.) And where, upon an indictment for stabbing, cutting, and wounding O. C. Codrington, it appeared that the defendant threw a finishing hammer, one end of which was round and flat, and the other end sharp, to draw out with, at the prosecutor, which struck him and wounded him on his nose, breaking the skin and leaving a scar on his nose an inch and a half long, but it did not appear which end of the hammer struck the prosecutor; upon a case reserved, whether this was a cut, stab, or wound, within the true construction of the old statute, it was holden that the defendant was properly convicted. (*R. v. Withers*, R. & M. C. C. 294; 4 C. & P. 446, S. C. See also *R. v. Payne*, 4 C. & P. 558; *R. v. Sheard*, 7 C. & P. 846; 2 Moo. C. C. 13, S. C.) On an indictment for wounding, the jury, upon the question whether if death had ensued the offence would have been murder, should consider whether the instrument employed was, in its ordinary use, likely to cause death; or, if it be an instrument not likely under ordinary circumstances to cause death, whether it was used in such an extraordinary manner as to make it likely to cause death, either by continued blows or otherwise. (*R. v. Howlett*, 7 C. & P. 274; *Reg. v. Dilworth*, 2 M. & Rob. 531.) The wounding must be produced by the defendant himself, and not be merely the result of a scuffle, or the like. (*R. v. Becket*, 1 M. & Rob. 526; *Reg. v. Day*, 1 Cox C. C. 207); or of a fall. (*Reg. v. Spooner*, 6 Cox C. C. 392.)

The intent to *murder* must be collected from the circumstances of the case, and the conduct or expressions of the party (see *tit. 'Homicide,' Vol. II.*). If the intent be to do some grievous bodily harm, see the 18th section of the Act, *post*, 754.

The intent to  
murder.

If it be questionable whether the shooting, etc., was by accident or design, proof may be given that, at another time, the prisoner intentionally shot the same person. (*R. v. Voke*, R. & R. C. C. 531.) Also on an indictment for attempting to murder by poison evidence of administer-

2. *Poisoning, etc.* ing at different times may be given to show the intent. (*R. v. Mogg*, 4 C. & P. 364.)

The intent to murder must exist in the mind at the time of the act done. (*Reg. v. Cruse*, 8 C. & P. 541; *Reg. v. Bourdon*, 2 C. & K. 366; *Reg. v. Caldecott*; *Reg. v. Davies*; *Russ. on Cr.* vol. i. p. 1006, 4th ed.)

In a case of stabbing, where the prisoner had used a deadly weapon, the fact that the prisoner was drunk does not at all alter the nature of the case; but if the prisoner had intemperately used an instrument not in its nature a deadly weapon at a time when he was drunk, the fact of his being drunk might induce the jury to less strongly infer a malicious intent in him at the time. (*R. v. Meakin*, 7 C. & P. 297.)

Where the prisoner put cantharides into the prosecutrix's tea-cup, and the jury found that he did it with intent to excite her sexual passion, in order to obtain connection with her, it was held that he was rightly convicted on an indictment alleging the intent to be to injure, aggrrieve, and annoy. (*Reg. v. Wilkins*, L. & C. 89; 31 L. J., M. C. 72.)

Wounding oneself with intent to commit suicide is not an attempt to commit murder, but is a misdemeanour triable at quarter sessions. (*R. v. Burgess*, L. & C. 258; 32 L. J. M. C. 55.)

The indictment,  
etc.

An indictment for poisoning, with intent to murder, must allege the thing administered to be poisonous or destructive: and therefore an indictment for administering sponge mixed with milk, not alleging the sponge to be destructive, was holden bad. (*R. v. Powles*, 4 C. & P. 571.)

In an indictment for cutting, stabbing, or wounding, the instrument or means by which the wound was inflicted need not be stated, and, if stated, the statement does not confine the prosecutor to prove a wound, etc., by such instrument or means. (*R. v. Briggs*, R. & M. C. C. 318.) Upon an indictment which charged a wound to have been inflicted by striking with a stick and kicking with the feet, proof that the wound was caused either by striking with a stick or kicking was holden sufficient, though it was uncertain by which of the two the injury was inflicted. (*Id.*)

On an indictment for shooting with intent to murder, if it be alleged that the gun was loaded with powder and a bullet, it must be proved to have been loaded with a bullet, otherwise the defendant must be acquitted. (*R. v. Hughes*, 5 C. & P. 126.) See *post*, s. 14, p. 753.

There does not seem any objection to insert counts on the 11th and 14th sections; and it is in all cases advisable, where it is doubtful whether the prisoner intended to murder or merely to maim. (*See R. v. Strange*, 8 Car. & P. 172; *Reg. v. Murphy*, 1 Cox, C. C. 108.)

An indictment for shooting may in one set of counts lay the shooting at one person with intent to murder him, and in another set the shooting at another person with intent to murder such other person, and the prosecutor will not be compelled to elect. (*R. v. Holt*, 7 C. & P. 518; *Butter's case*, 1 Lew. 86; but see also *post*, 755.)

On the trial of any indictment for feloniously wounding the jury may convict of unlawfully wounding (see 14 & 15 Vict. c. 19, s. 5). And where three are indicted for maliciously wounding with intent to do grievous bodily harm, the jury may convict two of the felony and the third of unlawfully wounding. (*Reg. v. Cunningham*, Bell, C. C. 72.)

Upon counts for an assault occasioning actual bodily harm, the jury may return a verdict of guilty of a common assault. (*Reg. v. Oliver*, Bell, C. C. 287; *Reg. v. Yeadon*, L. & C. 81; 31 L. J., M. C. 70.)

The jury may also convict for an attempt upon an indictment for any offence under these sections (see sect. 9).

The statute makes no difference in the crimes mentioned specifically, and the being present aiding and abetting. Therefore the same indictment may contain counts with reference to either offence. (*R. v. Towle and others*, R. & R. 314.) And if an indictment for shooting at another

charge that a person unknown feloniously, etc., did shoot at A. B., and that the prisoner and others were *present*, aiding and abetting, etc., the said unknown person, the *said felony* to do and commit, etc., this is sufficient, without its being stated that the prisoner was *feloniously present*, etc. (*R. v. Towle and others*, *R. & R.* 314; *Collyer's Stat.* 12.)

2. *Poisoning*,  
etc.

By 24 & 25 Vict. c. 100, s. 14, whosoever shall attempt to administer to, or shall attempt to cause to be administered to, or to be taken by, any person any poison or other destructive thing, or shall shoot at any person, or shall, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, or shall attempt to drown, suffocate, or strangle any person, with intent, in any of the cases aforesaid, to commit murder, shall, whether any bodily injury shall be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five], or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement.

Attempts to murder by poisoning, shooting, drowning, suffocating, etc.

The offence is not triable at the quarter sessions. (5 & 6 Vict. c. 38, s. 1.)

See a case as to what is an attempt to poison, *ante*, 750; and as to what is a poisoning within the 11th section, *ante*, 750. Where the prisoner put salts of sorrel in a sugar basin, in order that the prosecutor might take it with his tea, it was held an attempt to administer. (*Reg. v. Dale*, 6 *Cox*, *C. C.* 547.)

What an attempt to poison.

Where A. sent a tin box to B., containing three pounds of gunpowder and two detonators, which were intended to ignite the gunpowder when any person opened the box, and so destroy the person who opened it:—it was held, that this was not an “attempt to discharge loaded arms at B.” within the 9 Geo. 4, c. 31 (*R. v. Mountford*, 7 *C. & P.* 242); but such a case is now provided for by sect. 15, *post*, 754, and sect. 29, *post*, 759. Where the shot was fired from the barrel of a percussion gun, by the prisoner striking the cap, which was upon the nipple of the barrel, *Paterson*, J., held it to be within the former Act; and, after consulting several of the judges, refused to reserve the point. (*R. v. Coates*, 6 *C. & P.* 394.)

What a shooting at, etc.

Upon an indictment on the 9 Geo. 1, c. 22, it must have been shown that the gun was loaded with a bullet, and levelled at the party (1 *Hawk. P. C.* c. 55, s. 9; *Weston's case*, 1 *Leach*, 247; *Empson's case*, 1 *Leach*, 224); but on the 43 Geo. 3, it was sufficient if the gun was loaded with powder and paper, if fired near enough to endanger life (*R. v. Kitchen*, *R. & R.* 95); yet, if every count alleges a pistol to be loaded with ball, the evidence must correspond (*R. v. Hughes*, 5 *C. & P.* 126); and so if alleged to be loaded with shot and other destructive materials (*Whitley's case*, 1 *Lewis*, 123; *Blake v. Barnard*, 9 *C. & P.* 626); but, if with a bullet, a ball will suffice (*Reg. v. Oxford*, 9 *C. & P.* 525).

To constitute the offence of attempting to discharge loaded fire-arms, they must be so *loaded* as to be capable of doing the mischief intended. If part of the loading has fallen out, though without the knowledge of the party, and what remains is inadequate to effect the mischief, the case is not within the Act. Nor is the case within the Act, if there be not such a loading at the time as is likely to produce a discharge, though it is possible it may produce it. This was held in the case of *R. v. William Carr*. (*R. & R. C. C.* 377). But now, by section 19, it is sufficient if the barrel be loaded, although the attempt to discharge may fail “from want of proper priming or from any other cause.” If a person, intending to shoot another, put his finger on the trigger of a loaded fire-arm, but is prevented from pulling the trigger; this is not an attempt to discharge loaded arms within the statute. (*Reg. v. St. George*, 9 *C. & P.* 483; *Reg. v. Lewis*, *Id.* 523.)

What an attempt to discharge arms, etc.

2. *Poisoning,*  
*etc.*

By any other  
means attempt-  
ing to commit  
murder.

By the 24 & 25 Vict. c. 100, s. 15, whosoever shall, by any means other than those specified in any of the preceding sections of this Act, attempt to commit murder shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement.

Shooting or  
wounding,  
etc., with intent  
to maim, or re-  
sist lawful  
apprehension,

By the 24 & 25 Vict. c. 100, s. 18, whosoever shall unlawfully and maliciously, by any means whatever, wound or cause any grievous bodily harm to any person, or shoot at any person, or, by drawing a trigger, or in any other manner, attempt to discharge any kind of loaded arms at any person, with intent, in any of the cases aforesaid, to maim, disfigure, or disable any person, or to do some other grievous bodily harm to any person, or with intent to resist or prevent the lawful apprehension or detainer of any person, shall be guilty of felony, and being convicted thereof, shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not exceeding three [five] years, or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement. (See the general clauses, *ante*, 746-749.)

As to what is a "shooting at" and an attempt to discharge, see *ante*, 753.

As to what is a "wounding," see *ante*, 751.

The offence is not triable at the quarter sessions (5 & 6 Vict. c. 38, s. 1).

What shall con-  
stitute loaded  
arms.

By sect. 19, any gun, pistol, or other arms which shall be loaded in the barrel with gunpowder or any other explosive substance, and ball, shot, slug, or other destructive material, shall be deemed to be loaded arms within the meaning of this Act, although the attempt to discharge the same may fail from want of proper priming or from any other cause.

See sect. 14, *ante*, 753.

Inflicting bodily  
injury, with or  
without weapon.

By sect. 20, whosoever shall unlawfully and maliciously wound or inflict any grievous bodily harm upon any other person, either with or without any weapon or instrument, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for the term of three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour.

As to what is a wounding, see *ante*, 751.

Unlawfully, etc.

The act must be done on an unlawful occasion. Where the act is charged to be done with intent to prevent a lawful apprehension, it must appear that the offender had some notification of the purpose for which he was apprehended. (See *ante*, "Arrest," Vol. I.)

Maliciously.

The act must have been done *maliciously*. Under the repealed Act of 9 Geo. 4, c. 31, if the crime would only have been *manslaughter*, if the death of the party had occurred in consequence of the injury, the case would not be within it; but this is otherwise under the above enactment. (See *R. v. Griffiths*, 8 C. & P. 248; *R. v. Nicholls*, 9 C. & P. 267; 2 Moo. C. C. 40.)

Presumption of  
malice.

Malice would in most cases be presumed. It is not necessary that the malicious intention should be conceived against any particular individual: if it be against all persons who may happen to come within the scope of the perpetrator's design, the particular mischief done to any one will be connected with the general malignant intent, and so the case will

fall within the statute. (2 *Hawk. c. 23, s. 16*; and see *Carroll's case, 1 East, P. C. 394*; *R. v. Hunt, 1 Moo. C. C. R. 93*, and *tit. "Homicide," Vol. II.*)

As to what is a wounding within the Act, see *ante*, 751.

To *maim* is to injure any part of a man's body, which may render him, in fighting, less able to defend himself or annoy his enemy. (1 *Hawk. c. 44, s. 1*; and see *tit. "Maim," ante*, 741. To *disfigure* is to do some external injury, which may detract from his personal appearance: and to *disable* is to do something which creates a permanent disability, and not merely a temporary injury. (See *R. v. Boyce, 1 Moo. C. C. 29*; *Jerv. Arch. C. L. 9th edit. 460.*)

2. *Poisoning, etc.*

What a maiming etc.

With respect to the intent Mr. Coke, a gentleman of Suffolk, and one Woodburn, a labourer, were indicted in 1722 on the repealed Act of 22 & 23 Car. 2, c. 1, s. 7. The latter gave the prosecutor several blows on the head with a sharp bill or hook, one of which slit the nose, the former being present, etc., and then they left him, supposing he was dead; the prosecutor, however, recovered. The prisoners in their defence insisted that their intent was to *murder* Crisp, the prosecutor, and not to maim him, and, therefore, that they were not within the statute. But Lord C. J. King said, that if one man attack another to murder him with such an instrument as a hook, which cannot but endanger the disfiguring him, and in such attack happen not to kill, but only to disfigure him, he may be indicted on this statute; and it shall be left to the jury to consider whether it were not a design to murder by disfiguring, and consequently, a malicious intent to disfigure as well as to *murder*. Accordingly, the jury found them guilty of such previous intent to disfigure, in order to effect their principal intent to murder; and they were both condemned and executed. (*R. v. Coke and Woodburn, 1 East, P. C. 400*; 16 *Howell's St. Tri. 54*; 4 *Bl. Com. 207.*)

Intent to maim, disfigure, or disable.

A broker and his man having levied a distress for rent, the man left in possession was ejected. The owner of the goods was not in the room at the time of the levy, and it was not proved that he was a party to the turning out of the man, or that he knew of the distress being levied, but on the broker and his assistants breaking open the outer door to re-enter, the prisoner struck one of the assistants with an axe on the forehead:—Held, that, under these circumstances, the prisoner must at least be found guilty of an assault; and also, that, although he might be found guilty of wounding, with intent to murder, or to do grievous bodily harm, yet he could not be found guilty of wounding with intent to maim and disable. (*Reg. v. Sullivan, 1 Car. & M. 209,—Parke.*)

The intent can, in general, be proved by presumptive evidence only. But it may be stated, as a general rule, that a man is answerable for his acts; and, therefore, if he stab B., supposing him to be A., he may be indicted for stabbing B., with intent to murder him (*R. v. Jarvis, 2 M. & Rob. 40*; *Reg. v. Lynch, 1 Cox, C. C. 361*; *Reg. v. Smith, Dears. C. C. 559*); but where the prisoner struck at A., and the prosecutor interfered and caught the blow, there was no intent to injure the person wounded as there was in the above cases. (*Reg. v. Hewlett, 1 F. & F. 91.*) Where the intent is laid to poison, etc., A., the intent must, it seems, be proved as laid (*Reg. v. Ryan, 2 M. & Rob. 213*); but since the statute 1 Vict. c. 85, it may be sufficient to lay the intent generally "to commit murder." See, however, *Russell on Cr.*, vol. i. p. 1003, n. (g).

Where the prisoner fired into a group of persons among whom was A., intending generally to do grievous bodily harm, and wounded A., it was held that he was rightly convicted on an indictment for shooting at A. with intent to do him grievous bodily harm. (*Reg. v. Fretwell, L. & C. 443*; 33 *L. J. M. C. 128.*)

Upon the difference between "an intention to injure" and "the motive for injuring," see *Roscoe's Cr. Ev.*, 7th edit., 1868, p. 563.

If, however, it be doubtful whether the act was done by accident or



2. *Poisoning, etc.* design, other circumstances may be given in evidence to prove the intent. (*Jerv. Arch. C. L.* 9th edit. 460.)

Firing with intent to shoot a person, who is not in any place where the shot can reach him, but is somewhere else, is not sufficient. (*R. v. Lovell*, 2 M. & Rob. 39.)

The intent must exist at the time. See *ante*, 752.

Intent to do  
grievous bodily  
harm.

In *R. v. Cox* (*R. & R. C. C.* 362), it was held, that cutting a child's private parts so as to enlarge them for the time may be considered as doing her *grievous bodily harm*, and done with that intent, though the hymen is not injured, the incision is not deep, and the wound, eventually, is not dangerous, and though the prisoner's principal object was to commit a rape.

It is not necessary that grievous bodily harm should actually be done. (*R. v. Hunt*, 1 Moo. C. C. 93.) But the nature of the wound inflicted will be an important consideration for the jury in estimating the intent. Upon the other hand, although grievous bodily harm be in fact done, yet the question of intent still remains. (*Reg. v. Wheeler*, 1 Cox, C. C. 106; *Reg. v. Cox*, 1 F. & F. 664; *Reg. v. Odgers*, 2 M. & Rob. 479.)

Intent to prevent  
apprehension or  
detainer of a  
person, etc.

On an indictment for shooting, etc., with intent to prevent the apprehension or detainer of a party, it must be shown that the apprehension or detainer was lawful. (See "*Arrest*," Vol. I.)

It was held not an offence within 43 Geo. 3, c. 58, for *maliciously cutting with intent to resist lawful apprehension*, if the cutting took place in an attempt to apprehend the prisoner, previous to notification to him of the purpose for which he was laid hold of. (*R. v. Ricketts*, 3 Camp. 68.)

But, in a more recent case, it was held that where the circumstances are such that a man must know why a person is about to apprehend him, he need not be told, and the arrest will be legal, and the resistance illegal, as much as if he had been told. (*R. v. Howarth*, 1 Moo. C. C. 207.) This case was an indictment on the repealed Act, 43 Geo. 3, but it will be equally applicable to the present statute. See also *R. v. Robinson*, 2 Stark. Ev. 693, n. (k).

Upon an indictment for stabbing, cutting, and wounding *Staple*, with intent to prevent and resist the apprehension and detainer of *G. Hood*, for an assault, it appeared that the warrant was to take "the body of — *Hood* (leaving a blank for the Christian name), of the hamlet of B., in the parish of F., in the same county, by whatsoever name he may be called or known, the son of *Samuel Hood*, to answer, etc." It was contended that the warrant was illegal, and would not justify the apprehension and detainer of the defendant; to which it was answered, that the description was a sufficient designation of the person. *Vaughan*, B., reserved the point; and the defendant having been convicted, the judges held that the warrant was insufficient, and that the conviction was wrong. (*R. v. Hood*, 1 Moo. C. C. 281.)

If a police constable, on being sent for at a late hour of the night to clear a beer house, do so, and one of the persons on leaving the house, and being told to go away, refuse to do so and use threatening language, the police constable is justified in laying hands on him to remove him; and if he cut the police constable with a knife with intent to do grievous bodily harm, this was held to be within the former statute. (*R. v. Herms*, 7 C. & P. 312.)

Indictment for cutting and wounding to prevent lawful apprehension and detainer by a policeman for committing damages and injury to plants and roots in a garden. It appeared that the prisoner was cutting and plucking flowers with intent to steal them. The conviction was held right. (*R. v. Fraser*, 1 Moo. C. C. 419.)

It seems that the fact of the party apprehended having committed a felony is not sufficient, but the constable must know that the per-

son has committed a felony in order to justify such constable in apprehending him. (*Reg. v. Dadson*, 2 Den. C. C. 35.)

Where a wounding with intent to resist lawful apprehension was alleged, it was held necessary to show proper authority (*R. v. Dyson*, 1 Stark. N. P. R. 246); but where the intent was to do grievous bodily harm, it was held a person detected at night in the attempt to commit felony might be detained by a private person without warrant. (*R. v. Hunt*, 1 Moo. C. C. 93.) And see tit. "Assault," Vol. I.

In an indictment under the 43 Geo. 3, c. 58, for cutting and maiming persons assisting a sheriff's officer, it was held incumbent on the prosecutor, not only to produce the warrant made out by the sheriff to the officer, but likewise the writ. (*R. v. W. & R. Meade*, Holt's C. N. P. 593.)

Gamekeepers being in a preserve between twelve and one at night heard the firing of two guns, and proceeding in the direction of the sound, met with two persons who neither had guns nor game upon them, nor were either found near them. The gamekeepers immediately seized them without calling on them to surrender, or in any way notifying to them who they were. The keepers were wounded, one of them seriously:—Held, that the prisoner who wounded them might, under the circumstances, and taking into consideration the situation, and the time of the night, etc., be properly convicted under the now repealed 9 Geo. 4, c. 31, ss. 11, 12. (*Rex v. Taylor and Penwright*, 7 Car. & P. 266, S. C.)

Sect. 21. Whosoever shall, by any means whatsoever, attempt to choke, suffocate, or strangle any other person, or shall, by any means calculated to choke, suffocate, or strangle, attempt to render any other person insensible, unconscious, or incapable of resistance, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

As to attempting to suffocate or strangle with intent to murder, see sect. 14, *ante*, 753.

The 26 & 27 Vict. c. 44 recites the 24 & 25 Vict. c. 96, s. 43, and the preceding clause, and enacts that, where any person is convicted of a crime under either of the said sections, the Court before whom he is convicted may, in addition to the punishment awarded by the said sections or any part thereof, direct that the offender, if a male, be once, twice, or thrice privately whipped, subject to the following provisions:—

1. That in the case of an offender whose age does not exceed sixteen years, the number of strokes at each such whipping do not exceed twenty-five, and the instrument used shall be a birch rod:
2. That in the case of any other male offender the number of strokes do not exceed fifty at each such whipping.
3. That in each case the Court in its sentence shall specify the number of strokes to be inflicted and the instrument to be used:

Provided that in no case shall such whipping take place after the expiration of six months from the passing of the sentence; provided also, that every such whipping to be inflicted on any person sentenced to penal servitude, shall be inflicted on him before he shall be removed to a convict prison with a view to his undergoing his sentence of penal servitude.

By sect. 22, whosoever shall unlawfully apply or administer to or cause to be taken by, or attempt to apply or administer to or attempt to

2. *Poisoning, etc.*

Attempting to choke, etc., in order to commit any indictable offence.

Using chloroform, etc., to

3. *Intending to Murder, etc.*

commit any indictable offence.

cause to be administered to or taken by, any person, any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing, with intent in any of such cases thereby to enable himself or any other person to commit, or with intent in any of such cases thereby to assist any other person in committing, any indictable offence, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any other term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour.

As to the words “administer or cause to be administered,” etc., see *ante*, 750.

The indictment.

The observations made, *ante*, 752, as to the indictment, will for the most part be here applicable.

In addition it should be observed that the intent must be proved as charged in the indictment. Where, under the former statute, the intent as laid in several counts of the indictment, was to murder, to disable, and to do some grievous bodily harm, and the intent found by the jury was, to prevent being apprehended, a conviction upon this indictment was held wrong. (*R. v. Duffin*, *R. & R.* 365; *R. v. Marshall*, 2 *Stark. Ev.* 925; *R. v. Boyce*, 1 *Moo. C. C.* 29.)

But where one intent only is laid in the indictment, and the jury find both that and another, as, for instance, where the intent laid is to do grievous bodily harm, and they find the intent to be, to prevent lawful apprehension, and, for the purpose of effecting this intent, to do grievous bodily harm, the indictment will be supported. (*R. v. Gillow*, *R. & R.* 85.)

So where on an indictment for wounding, with intent to do some grievous bodily harm, it appeared that two persons, one of whom was the prisoner, attacked and wounded the prosecutor, and robbed him; it was not proved which of the persons inflicted the wound:—It was held that if the prisoner inflicted the wound on the prosecutor, with intent to rob him, he having at the same time an intent to do him some grievous bodily harm to effectuate such his intention of robbing, he ought to be convicted on this indictment. (*Reg. v. Bowen*, 1 *Car. & M.* 149.)

It seems, a general count stating the maiming to have been to prevent the lawful apprehension of a prisoner for an offence for which he was liable by law to be apprehended, will not suffice on demurrer; though, by 7 Geo. 4, c. 64, s. 21, it seems it would suffice after verdict. (See *R. v. Howarth*, 1 *Moo. C. C.* 210, etc.)

An indictment charging the act to have been done “feloniously, wilfully, and maliciously,” is bad, the words of the statute being “unlawfully and maliciously.” (*R. v. Ryan*, 2 *Moo. C. C.* 15; *R. v. Turner*, *post*, 770.)

Where there is the least doubt as to the evidence, counts should be added charging the intent in various ways. (See *R. v. Strange*, 8 *Car. & P.* 172.)

### III. Intending to Murder or to cause Grievous Bodily Harm, etc., by the Explosion of Gunpowder, etc.

Destroying or damaging a building with gunpowder with intent to murder.

By the 24 & 25 Vict. c. 100, s. 12, whosoever, by the explosion of gunpowder or other explosive substance, shall destroy or damage any building with intent to commit murder, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

Causing bodily

By sect. 28; whosoever shall unlawfully and maliciously, by the ex-

plosion of gunpowder or other explosive substance, burn, maim, disfigure, disable, or do any grievous bodily harm to any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years with or without whipping.

Sect. 29. Whosoever shall unlawfully and maliciously cause any gunpowder or other explosive substance to explode, or send or deliver to or cause to be taken or received by any person any explosive substance or any other dangerous or noxious thing, or put or lay at any place, or cast or throw at or upon or otherwise apply to any person, any corrosive fluid or any destructive or explosive substance, with intent in any of the cases aforesaid to burn, maim, disfigure, or disable any person, or to do some grievous bodily harm to any person, shall, whether any bodily injury be effected or not, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

Sect. 30. Whosoever shall unlawfully and maliciously place or throw in, into, upon, against, or near any building, ship, or vessel any gunpowder or other explosive substance, with intent to do any bodily injury to any person, shall, whether or not any explosion take place, and whether or not any bodily injury be effected, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and if a male under the age of sixteen years, with or without whipping.

As to the offence of making or having gunpowder, etc., with intent to commit a felony, and as to warrants for searching houses, see sects. 64, 65, tit. "*Gunpowder*," Vol. II.; and see also the similar sections of the 24 & 25 Vict. c. 97, ss. 54, 55, post, tit. "*Malicious Injuries to Property*." See also that title for other offences relating to gunpowder.

#### 4. *Murder of or Concealing the Birth of a Child.*

injury by gunpowder.

Causing gunpowder to explode, or sending to any person an explosive substance, or throwing corrosive fluid on a person with intent to do grievous bodily harm.

Placing gunpowder near a building with intent to do bodily injury to any person.

## IV. *Murder of or Concealing the Birth of a Child.*

The offence of murder in general will be found fully discussed under title "*Homicide*," Vol. II.

Child murder.

In order to constitute the offence of child-murder it must be clearly established that the child was born alive. It must appear to have been alive after the whole body of the child was brought into the world. It is not sufficient that the child respire in the progress of the birth. (*R. v. Poulton*, 5 Car. & P. 329.) There must be an independent animation in the child, a complete separation from the mother. (*R. v. Enoch*, 5 C. & P. 539; *R. v. Wright*, 9 id. 754; *R. v. Sellis*, 7 id. 850.) But if a child be wholly produced and then killed, it will be the offence of murder, though the umbilical cord be not severed. (*R. v. Sellis*, 7 C. & P. 850; *R. v. Crutchley*, id. 814; *R. v. Reeves*, 9 id. 25, *R. v. Trilloes*, 2 Moo.

What amounts to.

4. *Murder of or Concealing the Birth of a Child.* *C. C.* 260.) There is no occasion for the child to have breathed after it was born, if born alive. (*R. v. Brain*, 6 *C. & P.* 349) (a).  
If the child be born alive and afterwards die in consequence of blows, etc., given to the mother, it seems this is murder. (3 *Inst.* 50.)

Where an ignorant midwife, attempting to deliver a woman, broke the skull of the child as soon as it appeared, and the child died shortly after it was born, it was objected that the child was not wholly born when the injury was received, but the conviction was affirmed. (*R. v. Senior*, 1 *Moo. C. C.* 346.)

When prisoner may be convicted of concealing the birth.

If on the trial of the indictment for the murder of a child the proof fails, the defendant may nevertheless be convicted of the concealment of the birth, if there be evidence to meet it, and as to which see *infra*. But, where the indictment is bad for not describing the child properly, the defendant cannot be convicted on that indictment for the concealment. (*Reg. v. Hicks*, 2 *M. & Rob.* 302.)

It has been considered that the enactment extends to a trial on the coroner's inquest, as well as upon a bill found by the grand jury. (*R. v. Cole*, 2 *Leach*, 1095; 3 *Camp.* 371; *R. v. Maynard*, *R. & R.* 240; 1 *Russ. C. & M.* 4th edit. 780.)

Abortion.

As to the offence of abortion, see tit. "*Abortion*," Vol. I.

Concealment of birth of.

The murder of *bastard* children by the mother was considered as a crime so difficult to be proved, that the 21 Jac. I. c. 17, was passed, which made the concealment of the death of a bastard child an undeniable evidence of murder in the mother, except she could prove by one witness at least that it was actually born dead. But this law, which was

(a) The following observations upon the subject of infanticide are collected in Mr. J. Jervis's valuable work on Coroners, 127-8.

The first question which naturally presents itself is, whether the child was born alive. As a test of this, it was formerly usual to immerse the lungs in water, it being supposed that if they floated, the child must have respired. But this test is now quite exploded, for it is obvious, that if the child make but one gasp and instantly die, the lungs will swim in water as readily as if the child had breathed longer, and it is not uncommon for an infant to breath as soon as its mouth is protruded from its mother, although it may die before its body be born. (*Hunt.* 17.) Air may also be passed into the lungs by inflation or be generated by putrefaction, and both will produce the same effect.

This question is, however, less difficult in cases of immature birth. Under the fifth month no fetus can be born alive; from the fifth to the seventh it may come into the world alive, but cannot maintain existence; but at the seventh it may be reared. As the period of gestation may be pretty accurately ascertained from the appearance of the foetus in these cases, the doubt is easily resolved.

(See *For. Med.* 312; *Prac. Med.* 112; 3 *Par.* 100.)

The next question is, the cause of the death. Now the child may die in the womb,—during the labour by pressure—or by strangulation from the umbilical cord. (*Elem. of Mid.* 180.) In which latter cases the body presents appearances which to a common observer would seem to be the marks of a violent death. Upon this subject Dr. Hunter says,—“When a child's head or face is swollen, and is very red or black, the vulgar, because hanged people look so, conclude it was strangled; nothing is more common in natural births.”—p. 13.

But the child, though safely delivered, may still die without any criminal act of the mother. Children may be born so weak, that if left to themselves, after breathing or sobbing, they would die; or even a strong child may be suffocated by being left upon its face either in the pool made by the natural discharges or upon wet clothes. (*Hunt.* 18.) These and a variety of other causes may contribute to the death of new-born infants, particularly where the mother is delivered in secret by herself, and being exhausted, frequently faints and becomes insensible.

accounted to savour strongly of severity, and always construed most favourably for the unfortunate object of accusation, was repealed, together with an Irish Act upon the same subject, by the 43 Geo. 3, c. 58, s. 3 (called Lord Ellenborough's Act). (4 *Bl. Com.* 198; 1 *Russ. C. & M.* 4th ed. 775.) The latter Act did not make the concealment an offence for which an indictment would lie. (*R. v. Parkinson*, 1 *Russ. C. & M.* 4th ed. 774, note (c).)

The former Acts having been repealed, it is now enacted by the 24 & 25 Vict. c. 100, s. 60, if any woman shall be delivered of a child, every person who shall, by any secret disposition of the dead body of the said child, whether such child died before, at, or after its birth, endeavour to conceal the birth thereof, shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be imprisoned for any term not exceeding two years, with or without hard labour: Provided that if any person tried for the murder of any child shall be acquitted thereof, it shall be lawful for the jury by whose verdict such person shall be acquitted to find, in case it shall so appear in evidence, that the child had recently been born, and that such person did, by some secret disposition of the dead body of such child, endeavour to conceal the birth thereof, and thereupon the Court may pass such sentence as if such person had been convicted upon an indictment for the concealment of the birth.

The offence is not triable at any quarter sessions, 5 & 6 Vict. c. 38, s. 1.

The above provision is in effect nearly the same as that of the 43 Geo. 3, c. 58, s. 3, except that the woman may now be indicted for the concealment as a specific misdemeanour, whereas under the 43 Geo. 3 she could be only found guilty of this offence, after a trial on an indictment or inquisition for murder; and also that by this Act hard labour may be imposed. Also by this new Act, the offence is extended to the concealment of the birth of any child, whether a bastard or not.

The 43 Geo. 3, c. 58, ss. 3 & 4, was held to extend to all cases of concealment of the birth, whether the child be born alive or otherwise, and although the birth was probably known to an accomplice. (*R. v. Cornwall*, *R. & R.* 336.)

Under the 21 Jac. I. it was held that if the mother called for help, or had previously confessed her pregnancy (*R. v. Peat*, 1 *East*, P. C. 229), these circumstances would probably negative the concealment. So if the woman made provision for the birth of her child, this also, it was held under the same Act, might be deemed a circumstance indicative of her intention not to conceal it. (*Id.*) So under the 43 Geo. 3, it appears to have been considered that if the woman made her pregnancy known to persons not implicated with her in the concealment, it would be an answer to the charge of concealment. (*R. v. Mary Southern*, 1 *Burn's J.* 24th ed. 335.) (a). And in a case under the 9 Geo. 4 the prisoner

4. *Murder of or Concealing the Birth of a Child.*

Concealing the birth of a child.

Not triable at sessions.

Observations and decisions as to the offence.

(a) In this case the prisoner was indicted for the wilful murder of her female bastard child. It appeared in evidence, that in the course of the night she was delivered of the child, which at four o'clock in the morning she took and threw into the privy. It also appeared that she had provided a cap and some trifling articles of child-bed linen. No marks of violence appeared on the body of the child; and the surgeon, who examined the prisoner soon after her delivery,

added, that from the state of the afterbirth, and from the appearance of the child, he was of opinion that even if the child had been born alive, it could only have lived for a very short period. It was contended for the prisoner, that the statute of 43 Geo. 3, c. 58, did not apply to the case of a still-born bastard child; and that from the construction which had been put on the former stat. of 21 James 1, c. 27 (the defects of which it was the object of the stat. 43 Geo. 3,

4. *Murder of or Concealing the Birth of a Child.*

was delivered of a child whose dead body was found at the prisoner's father's house in a bed among the feathers. There was no evidence to show who placed it there, but it being proved that the prisoner had sent for a surgeon at the time of her confinement, and had prepared child's clothes, *Parke, J.*, directed an acquittal on the charge of endeavouring to conceal the birth. (*R. v. Higley*, 4 C. & P. 366.) But in a more recent case it was considered that the fact of the woman sending for a person at the beginning of her labour, and her previously allowing her pregnancy to be known to other persons, was only evidence for the consideration of the jury that she did not intend concealment, and not a bar to the prosecution, and that she might notwithstanding be convicted of the concealment. (*R. v. Douglas*, 1 Moo. C. C. 480; 7 C. & P. 644, S. C.)

There was formerly under the 9 Geo. 4, c. 31, s. 14, a difficulty with regard to the words "disposing of the dead body," which were used in that section; but the words of the present section are "any secret disposition," and it is therefore now quite immaterial whether or not the place of concealment be final or temporary. There must, however, be some act of secret disposal and of concealment. So where the child was born in a privy, and fell into the soil and was suffocated, the jury were told that if the child came from the mother unawares, the mother must be acquitted. (*R. v. Turner*, 8 C. & P. 755. See also *Reg. v. Coxhead*, 1 C. & K. 623, and *Reg. v. Derham*, 1 Cox, C. C. 56.) Where the child was found between the bed and the mattress, it was held to be a secret disposal. (*Reg. v. Goldthorpe*, 2 Moo. C. C. R. 244.) So also in *Reg. v. Perry*, where the woman hid the body of the child under the bolster, with the intention of removing it afterwards, this was held to be a secret disposal. (See also *Reg. v. Gogarty*, 7 Cox, C. C. 107.)

In *Reg. v. Opie*, 8 Cox, C. C. 332, however, *Martin, B.*, agreed with *Pollock, C.B.*, in dissenting from the other judges in *Reg. v. Perry*, *supra*. And in a more recent case, where the prisoner denied to her mistress that she was in the family-way, but told the doctor she had been confined, and that the child was in a box in her bed-room, and the child was found in the box with the lid open, *Byles, J.*, left it to the jury to say if they thought this was a secret disposition of the body; in his opinion it was not. (*Reg. v. Sleep*, 9 Cox C. C. 559.)

An indictment for endeavouring to conceal the birth of a child need not state whether the child died before, at, or after the birth. (*R. v. Coxhead*, 1 C. & K. 623.)

It seems, per *Martin, B.*, that a foetus not bigger than a man's finger, but having the shape of a child, is a "child" within the statute. (*Reg. v. Colmer*, 9 Cox, C. C. 506.) But in *Reg. v. Hewitt*, 4 F. & F. 1101, *Smith, J.*, left it to the jury to say whether what the prisoner had concealed was a child or only a foetus. And so also in *Reg. v. Berriman*, 6

c. 58, to remedy, and within the provisions of which the present case would not fall), that even if it did not sufficiently appear that the child was born dead, the circumstances of the prisoner having made provision for the birth would take the case out of the statute. But *Bayley, J.*, said, he should rule that the stat. 43 Geo. 3, c. 58, extended to all cases, whether it was proved that the child was still-born, or left the matter in doubt; and that he was of opinion in this case there was sufficient evidence to go to the jury of a concealment of the birth. His lordship added, that if the prisoner had avowed her preg-

nancy while she was in that state, or had, to the knowledge of any other persons, made preparation for her confinement, these circumstances would undoubtedly have been evidence to have satisfied a jury that the putting away the child was not for the purpose of concealing the birth, but that they would only have been matters of evidence, and would not have withdrawn the question of concealment from the consideration of the jury. The jury found the prisoner guilty of the concealment, and she was sentenced to be imprisoned two months in the house of correction.

*Cox, C. C.* 383, *Erle, J.*, told the jury the child must have arrived at that state of maturity that it might have been a living child, though it was not necessary the child should have been born alive. He said, "There is no law which compels a woman to proclaim her own want of chastity; and if she had miscarried at a time when the foetus was but a few months old, and therefore could have no chance of life, you would not convict her upon this charge."

## V. **Forms.**

List of Forms :—

1. *Commitment.*
2. *Indictment for administering poison with intent to murder, s. 11.*
3. *Indictment for wounding with intent to murder, s. 11.*
4. *Indictment for administering poison so as to endanger life, etc., ss. 23, 24.*
5. *Indictment for attempting to poison with intent to murder, s. 14.*
6. *Indictment for attempting to drown with intent to murder, s. 14.*
7. *Indictment for shooting with intent to murder, s. 14.*
8. *Indictment for attempting to shoot with intent to murder, s. 14.*
9. *Indictment for other attempts to murder, s. 15.*
10. *Indictment for wounding with intent to maim, etc., s. 18.*
11. *Indictment for unlawfully wounding, s. 20.*
12. *Indictment for attempting to choke, etc., with intent to commit an indictable offence, s. 21.*
13. *Indictment for administering chloroform, etc., with intent to commit an indictable offence, s. 22.*
14. *Indictment for attempting to murder by gunpowder, s. 12.*
15. *Indictment for burning any person by gunpowder, s. 28.*
16. *Indictment for sending an explosive substance with intent to burn, s. 29.*
17. *Indictment for throwing corrosive fluid, etc., with intent to burn, s. 29.*
18. *Indictment for concealment of birth, s. 60.*

To the constable of \_\_\_\_\_, and to the keeper of the [house of correction]  
 at \_\_\_\_\_, in the said [county] of \_\_\_\_\_ (1.) Commitment.

Whereas *A. B.* was this day charged [with one *M. M.*, who has been held to bail] before me, *J. S.*, one of her Majesty's justices of the peace in and for the said [county] of \_\_\_\_\_, on the oath of *C. D.* of \_\_\_\_\_ [farmer],



## 5. Forms.

and others, for that [etc., stating shortly the offence as in the indictment, see the forms, *infra*]. These are therefore to command you, the said constable of , to take the said A. B. and him safely to convey to the [house of correction] at aforesaid, and there to deliver him to the keeper thereof, together with this precept; and I do hereby command you, the said keeper of the said [house of correction] to receive the said A. B. into your custody in the said [house of correction], and there safely keep him until he shall be thence delivered by due course of law.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, in the year of our Lord \_\_\_\_\_, at \_\_\_\_\_, in the [county] aforesaid.

J. S. (L. S.)

(2.) Indictment for administering poison with intent to murder, s. 11.

Central Criminal Court to wit.—*The jurors for our lady the Queen upon their oath present that C. D. on the first day of June in the year of our Lord \* feloniously and unlawfully did administer to one J. N. ["administer to or cause to be administered to or to be taken by any person"] a large quantity, to wit, two drachms of a certain deadly poison called white arsenic ["any poison or other destructive thing"] with intent thereby then feloniously, wilfully, and of his malice aforethought, the said J. N. to kill and murder; against the form, etc.*

Add counts stating that the defendant "*did cause to be administered to J. N.,*" and "*did cause to be taken by J. N.*" "*a large quantity,*" etc.; and, if the description of poison be doubtful, add counts describing it in different ways, and one count stating it to be "*a certain destructive thing to the jurors aforesaid unknown,*" etc., and if there be any doubt whether the poison was intended for A. B., add a count stating the intent to be "*to commit murder*" generally.

(3.) Indictment for wounding with intent to murder, s. 11.

(Commence as above) *one A. B. feloniously and unlawfully did wound with intent [etc., as above. Add a count charging an intent "to commit murder," and counts for wounding with intent to maim, etc., post, form (10)].*

(4.) Indictment for administering poison so as to endanger life, etc., s. 23.

(Commence as in form (2)) *feloniously and unlawfully and maliciously did administer to one J. N. ["administer to or cause to be administered to or taken by any person"] a large quantity, to wit, two drachms of a certain deadly poison called white arsenic ["any poison or other destructive or noxious thing"], and thereby then did endanger the life of the said J. N.; against the form, etc.*

Add a count stating that the defendant "*did cause to be taken by J. N. a large quantity,*" etc., and if the kind of poison, etc., be doubtful, add counts describing it in different ways, and also stating it to be "*a certain destructive thing,*" or "*a certain noxious thing to the jurors aforesaid unknown.*" There should also be a set of counts stating that the defendant "*thereby inflicted upon J. N. grievous bodily harm.*"

An indictment on sect. 24 for administering, etc., poison, etc., with intent to injure, aggrieve, or annoy the prosecutor, may be framed from the above precedent.

(5.) Indictment for attempting to poison with intent, etc., s. 14.

(Commence as in form (2)) *feloniously and unlawfully did attempt to administer ["attempt to administer to or attempt to cause to be administered to or to be taken by"] to one J. N. a large quantity, to wit, two drachms of a certain deadly poison called white arsenic ["any poison or other destructive thing"], with intent, etc., as in form (2). Add counts charging that the defendant "attempted to cause to be administered to," and that "he attempted to cause to be taken by" J. N. the poison, etc.*

(6.) Indictment for attempting

(Commence as in form (2)) *feloniously and unlawfully did take one J. N. into both the hands of him the said C. D. and feloniously and unlawfully did*

cast, throw, and push the said J. N. into a certain pond, wherein there was a great quantity of water, and did thereby then feloniously and unlawfully attempt the said J. N. to drown and suffocate ["drown, suffocate, or strangle"], with intent thereby then feloniously, wilfully, and of his malice aforethought the said J. N. to kill and murder against the form, etc. Add a count charging generally that the defendant "did attempt to drown J. N.," etc., and counts charging the intent to be "to commit murder."

## 5. Forms.

to drown, with intent to murder, etc., s. 14.

(Commence as in form (2)) *a certain gun then loaded with gunpowder and divers leaden shot at and against one J. N., feloniously and unlawfully did shoot with intent, etc., as in form (2).*

Add also counts for shooting with intent to maim, etc., *infra*, form (10).

(7.) Indictment for shooting with intent to murder, s. 14.

(Commence as in form (2)) *did, by drawing the trigger ["drawing the trigger, or in any other manner"] of a certain pistol ["any kind of loaded arms"], then loaded with gunpowder and one leaden bullet, feloniously and unlawfully attempt to discharge the said pistol at and against one J. N., with intent, etc., as in form (2). Add a count charging an intent "to commit murder," and counts for attempting to shoot, with intent to maim, etc.*

(8.) Indictment for attempting to shoot with intent, etc., s. 14.

(Commence as in form (2) to the \*, and then thus:—) *feloniously, unlawfully, and maliciously did by then [state the Act] attempt feloniously, wilfully, and of his malice aforethought, one J. N. to kill and murder, against the form, etc.*

Add a count charging an intent "to commit murder."

(9.) Indictment for other attempts to murder, s. 15.

Central Criminal Court to wit.—*The jurors for our lady the Queen, upon their oath, present that C. D., on the first day of June, in the year of our Lord , one J. N. then feloniously, unlawfully, and maliciously did wound, with intent in so doing, him the said J. N., thereby then to maim, against the form of the statute in such case made and provided, and against the peace of our lady the Queen, her crown and dignity. [2nd count.]—And the jurors aforesaid, upon their oath aforesaid, do further present that the said C. D. afterwards, to wit, on the day and year aforesaid [etc., as in the last count], with intent in so doing him the said J. N. thereby then to disfigure; against the form of the statute, etc. [3rd count, same as the last]—with intent in so doing him, the said J. N., thereby then to disable; against the form, etc. [4th count, same as the last]—with intent, in so doing, him the said J. N., thereby then to do some grievous bodily harm; against the form, etc. [5th count, same as the last]—with intent, in so doing, thereby then to prevent ["resist or prevent"] the lawful apprehension ["apprehension or detainer"] of the said J. N. ["any person"]; against the form, etc.*

(10.) Indictment for wounding with intent to maim, etc., s. 18.

(Commence as in form (2)) *one J. N. unlawfully and maliciously did wound ["wound or inflict any grievous bodily harm upon"]; against the form, etc.*

Add a count charging that the defendant "did inflict grievous bodily harm upon J. N."

(11.) Indictment for unlawfully wounding, s. 20.

(Commence as in form (2)) *feloniously and unlawfully did attempt by then [state the means—"by any means whatsoever"] to choke, suffocate, and strangle one J. N. ["choke, suffocate, or strangle any person," or "by any means calculated to choke, suffocate, or strangle, attempt to render any person insensible, unconscious or incapable of resistance"], with intent thereby then to*

(12.) Indictment for attempting to choke, etc., with intent to commit an indictable offence, s. 21.

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enable him the said C. D. the moneys, goods and chattels of the said J. N. feloniously and unlawfully to steal, take, and carry away ["with intent to enable himself or any other person to commit" or "to assist any other person in committing an indictable offence"]; *against the form*, etc.

Add counts varying the statement of the overt acts and of the intent.

(13.) Indictment for administering chloroform, etc., with intent to commit an indictable offence, s. 22.

(Commence as in form (2)) *feloniously and unlawfully did apply and administer to one J. N.* ["apply or administer or cause to be taken, or attempt to apply or administer to, or attempt to cause to be administered to or taken by"] *certain chloroform* ["any chloroform, laudanum, or other stupefying or overpowering drug, matter, or thing"], *with intent thereby then to enable him the said C. D. [or one A. B.] the moneys, goods, and chattels of the said J. N., from the person of the said J. N. feloniously and unlawfully to steal, take, and carry away* ["with intent thereby to enable himself or any other person to commit, or with intent to assist any other person in committing any indictable offence"] *against the form*, etc. If it be not certain that it was chloroform [or laudanum] that was administered, add a count or counts stating it to be "*a certain stupefying and overpowering drug and matter to the jurors aforesaid unknown.*"

Add also counts varying the intent if necessary.

(14.) Indictment for attempting to murder by the destruction of a building by gunpowder, s. 12.

(Commence as in form (2)) *feloniously, unlawfully, and maliciously did by the explosion of a certain explosive substance, that is to say, gunpowder, destroy [destroy or damage] a certain building situate in the parish of \_\_\_\_\_ in the county aforesaid, with the intent thereby then feloniously, wilfully, and of his malice aforethought, one J. N. to kill and murder against the form*, etc.

Add a count, charging the intent to be to commit murder.

(15.) Indictment for burning any person by gunpowder, s. 28.

(Commence as in form (2)) *feloniously, unlawfully, and maliciously by the explosion of a certain explosive substance, that is to say, gunpowder, one A. B. did burn, against the form*, etc. [Add counts charging an intent to "*maim*," to "*disfigure*," to "*disable*," and to "*do grievous bodily harm*," see *ante*, form (10).]

(16.) Indictment for sending an explosive substance, with intent, etc., s. 29.

(Commence as in form (2)) *feloniously, unlawfully, and maliciously did send* ["send or deliver to, or cause to be taken or received by, any person"] *to one A. B. a certain explosive substance and dangerous and noxious thing, to wit, two drachms of fulminating silver, and two pounds weight of gunpowder, with intent in so doing him the said A. B. thereby then to burn* ["burn, maim, disfigure, or disable, or do some grievous bodily harm"] *against the form*, etc.

Add counts varying the injury and intent, see *ante*, form (10).

(17.) Indictment for throwing corrosive fluid with intent, etc., s. 29.

(Commence as in form (2)) *feloniously, unlawfully, and maliciously did cast and throw upon* ["cast or throw at or upon, or otherwise apply to any person"] *one A. B., a certain corrosive fluid, to wit, one pint of oil of vitriol* ["any corrosive fluid, or other destructive or explosive substance"], *with intent in so doing him, the said A. B., thereby then to burn, against the form*, etc.

Add counts varying the injury and intent, see *ante*, form (10).

(18.) Indictment for concealment of birth, s. 60.

Yorkshire } *The jurors for our lady the Queen upon their oath present that A. S. to wit. } on the first day of November in the year of our Lord \_\_\_\_\_ was delivered of a child: and that the said A. S. being so delivered of the said child as aforesaid, did then unlawfully endeavour to conceal the birth of the said child by secretly burying* ["by some secret disposition of"] *the dead body of the said child, against the form*, etc.

Add a count, stating the means of concealment, specially when it is otherwise than by secret burying.

## Malicious Injuries to Property.

The principal Act now in force relative to malicious injuries to property is the 24 & 25 Vict. c. 97, entitled "An Act to Consolidate and Amend the Statute Law of England and Ireland relating to Malicious Injuries to Property," and passed 6th August, 1861. After reciting that it is expedient to consolidate and amend the statute law of England and Ireland relating to malicious injuries to property, the Act proceeds to enact certain provisions, which will be considered in the order in which they are there found.

- I. *Injuries by Fire to Buildings and Goods therein*, ss. 1-8, pp. 768-772.
  - II. *Injuries by Explosive Substances to Buildings and Goods therein*, ss. 9, 10, p. 773.
  - III. *Injuries to Buildings by Rioters*, ss. 11, 12, pp. 773-775.
  - IV. *Injuries to Buildings by Tenants*, s. 13, p. 775.
  - V. *Injuries to Manufactures, Machinery, etc.*, ss. 14, 15, p. 775.
  - VI. *Injuries to Corn, Trees, and Vegetable Productions*, ss. 16-24, pp. 775-776.
  - VII. *Injuries to Fences*, s. 25, p. 780.
  - VIII. *Injuries to Mines*, ss. 26-29, pp. 780-782.
  - IX. *Injuries to Sea and River Banks, and to Works on Rivers, Canals, etc.*, ss. 30, 31, p. 782.
  - X. *Injuries to Ponds*, s. 32, p. 783.
  - XI. *Injuries to Bridges, Viaducts, and Toll Bars*, ss. 33, 34, pp. 783, 784.
  - XII. *Injuries to Railway Carriages and Telegraphs*, ss. 35-38, p. 784.
  - XIII. *Injuries to Works of Art*, s. 39, p. 786.
  - XIV. *Injuries to Cattle and other Animals*, ss. 40, 41, p. 787.
  - XV. *Injuries to Vessels, etc.*, ss. 42-49, pp. 788-790.
  - XVI. *Sending Letters Threatening to Burn or Destroy*, s. 50, p. 790.
  - XVII. *Injuries not before Provided for*, ss. 51-53, p. 791.
  - XVIII. *Making Gunpowder to Commit Offences and Searching for the same*, ss. 54, 55, p. 792.
  - XIX. *General Clauses of the Act*, s. 56-79, pp. 793-798.
  - XX. *Forms*, 799.
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1. *Injuries by Fire to Buildings, and Goods therein.*

Setting fire to a church or chapel.

I. *Injuries by Fire to Buildings, and Goods therein.*

By sect. 1, whosoever shall unlawfully and maliciously set fire to any church, chapel, meeting house, or other place of Divine worship, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

“Unlawfully and maliciously.”

Though it is not necessary to prove malice against the owner (see sect. 58, *post*, 793), yet the indictment must allege the damage to have been done “unlawfully and maliciously.” (*R. v. Turner*, 1 *Moo. C. C.* 239; *R. v. Lewis*, *Russell on Crimes*, 1067, 4th ed.)

Arson at common law.

The definition of arson at common law is as follows:—Arson is the malicious and wilful burning the house of another (3 *Inst.* 66; 1 *Hale*, 566); and to constitute the offence there must be an actual burning of some part of the house (3 *Inst.* 66; 1 *Hale*, 568, 569), though it is not necessary that any flames should appear. (*R. v. Stallion*, 1 *Moo. C. C.* 398; *Reg. v. Parker*, 9 *C. & P.* 45; *Reg. v. Russell*, *C. & M.* 541; *R. v. Newill*, 1 *Moo. C. C.* 458; 5 *C. & P.* 266, *note*.)

The malice may be express or implied. (*R. v. Philp*, 1 *Moo. C. C.* 263.) If a man set fire to his own house it is no felony; but if his house be near to others it would be a misdemeanour (1 *Hale*, 568, 569; 1 *Hawk. P. C. c.* 39, s. 15; 4 *Bl. Com.* 221); and if he intend maliciously to burn his own house, and the direct and necessary consequence is the burning of the house of another, it is a felony. (*Isaac's case*, 2 *East*, *P. C. c.* 21, s. 8, p. 1031; *Probert's case*, *ib.* s. 7.)

A tenant for years, a wife, a copyholder, etc., could not be convicted of arson in burning their houses; but if the landlord burnt the house of his tenant it is otherwise. (*Holmes's case*, *Cro. Car.* 376; *R. v. March*, 1 *Moo. C. C.* 182; *Spalding's case*, 1 *Leach*, 218; *Breene's case*, 1 *Leach*, 220; *Pedley's case*, 1 *Leach*, 242; *Fost.* 115; 4 *Bl. Com.* 221.)

These common law principles have been very greatly extended by the provisions of the present statute, and the difficulties in regard to the possession of the house, or the malice against the owner of the property, are now removed by sects. 59 and 58 respectively.

“Church, chapel, and meeting houses.”

The words “church, chapel, meeting house, or other place of Divine worship” are used also in sect. 11 of this Act, and are the same as those used in sect. 50 of the “Larceny Act.” See *ante*, 248.

Setting fire to a dwelling-house, any person being therein.

By sect. 2, whosoever shall unlawfully and maliciously set fire to any dwelling-house, any person being therein, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *supra*.

The intent.

In this section no mention is made of the intent with which the act is done; and it seems it is not necessary to show that the prisoner knew that any person was in the house. (*Reg. v. Jeans*, *Gloucester Spr. Assizes*, 1842, *Russ. on Crimes*, vol. ii. 1029, 4th ed.)

“Any person being therein.”

It must be shown that some one was in the house at the time the house caught fire; and where a person was in a house at the time the prisoner set fire to an outhouse, but left the house before the fire reached

it, it was held that the offence was not proved within this section (*Reg. v. Fletcher*, 2 C. & K. 215; *Reg. v. Warren*, 1 Cox, C. C. 68); *sed quære*, whether the outhouse was not a dwelling-house, for the purposes of arson.

1. *Injuries by Fire to Buildings and Goods therein.*

There is in this statute no provision describing what is and what is not a dwelling-house, as in the 7 & 8 Geo. 4, c. 29, s. 13, and the 24 & 25 Vict. c. 96, s. 53, for burglary, etc., and it may, therefore, be useful to consider some of the cases decided upon this point. Under the repealed statute, 9 Geo. 1, c. 22, a common gaol was held to be a house (*Donnan's case*, 2 Bl. Rep. 682); but a mere lock-up, where persons are never detained more than a night or two, was held not to be a house. (*Reg. v. Connor*, 2 Cox, C. C. 65.)

"Dwelling-house."

A building intended for a dwelling-house, but used as a place to deposit straw, etc., was neither a house, outhouse, nor barn. (*Elsmore v. St. Briavels*, 8 B. & C. 461; see also *Hiles v. Shrewsbury*, 3 East, 457.)

A dwelling-house must be one in which a person dwells (*Reg. v. Allison*, 1 Cox, C. C. 24); but temporary absence is not sufficient to take the building out of the protection of the statute. (*Reg. v. Kimbrey*, 6 Cox, C. C. 464.) A building not intended for a dwelling-house, but slept in by some one without the leave of the owner, and a cellar under a cottage separately occupied, were held not to be houses. (*Reg. v. England*, 1 C. & K. 533; *Anonymous*, 1 Lewis, 8.)

By sect. 3, whosoever shall unlawfully and maliciously set fire to any house, stable, coach-house, outhouse, warehouse, office, shop, mill, malt-house, hop-oast, barn, storehouse, granary, hovel, shed, or fold, or to any farm building, or to any building or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof, whether the same shall then be in the possession of the offender or in the possession of any other person, with intent thereby to injure or defraud any person, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

Setting fire to a house, outhouse, manufactory, farm, building, etc.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

As to what is a "house," see the preceding section.

A building merely intended for a dwelling-house, but used as a place to deposit straw, etc. (*Elsmore v. St. Briavels*, 8 B. & C. 461), a cellar under a cottage separately occupied (*Anonymous*, 1 Lewis, 8), an open building at a distance from the owner's house (*R. v. Ellison*, 1 Moo. C. C. 336; *R. v. Haughton*, 5 C. & P. 555; *R. v. Parrott*, 6 C. & P. 402; *Reg. v. Hammond*, 1 Cox, C. C. 60), were held not to be outhouses within the corresponding section of the repealed Acts.

"Outhouse."

A stable with a chamber over it, and adjoining a house (*North's case*, 2 East, P. C. c. 21, s. 5, p. 1021); a school-room separated from a house by a narrow passage, and having part of the roof of the house reaching over it, and rented with the house (*Winter's case*, R. & R. 295); an open shed in a farmyard near the house (*R. v. Stallion*, 1 Moo. C. C. 398); and a pigsty within the curtilage (*Reg. v. Jones*, 2 Moo. C. C. 308), were held to be outhouses.

A place which had been used as a brick-kiln, and in which the prosecutor kept his cow; and a place once used as a stable, but allowed to go to decay for eight years and then used as a shed, were held not to be stables. (*R. v. Haughton*, 5 C. & P. 555; *Reg. v. Colley*, 2 M. & Rob. 475; and see also *Reg. v. Munson*, 2 Cox, C. C. 186.) But in *Reg. v. Hammond*, 1 Cox, C. C. 60, it was left to the jury to say if the place set fire to was a stable or not.

"Stable."

1. *Injuries by Fire to Buildings and Goods therein.*

Where a building was described as a "shed," and was used as a workshop and for storing timber, it was held to be a shed within the 7 & 8 Vict. c. 62, s. 1, from which this section is taken, because that section applied evidently to other buildings beside farm buildings. (*Reg. v. Amos*, 2 Den. C. C. 65.)

"Shed."

"Building used in trade."

A building standing on premises belonging to a gentleman who employed his capital in building houses, he himself providing materials and superintending the work, intending to let or sell the houses so built, and used as a workshop and storehouse for timber, etc., for building purposes, was held to be a "building used in carrying on trade" within the 1 Vict. c. 89, s. 3. (*Reg. v. Amos*; 2 Den. C. C. 65.)

A building originally intended for a stable was, as to a part, still used as such, but the other end (in which the fire was) contained a stack of haulm and a quantity of tiles, stored for the use of the prosecutor, a builder, who had also been accustomed to keep timber and sand there, and had lately mixed some mortar there for building purposes: held that the building was used for carrying on the trade of a builder. (*Reg. v. Munson*, 2 Cox, C. C. 186.)

Intent.

The "intent to injure" must be inferred from the act, if the necessary consequence of the act be the setting fire of the building. (*R. v. Farrington*, R. & R. 207; see *R. v. Newill*, 1 Moo. C. C. 458.)

It is unnecessary to allege or prove an intent to defraud any particular person (see sect. 60, *post*, 794).

Indictment.

At common law the indictment should state the offence to have been done "wilfully and maliciously," and under the present statute "unlawfully and maliciously." (*Minton's case*, 2 East, P. C. 21, s. 5, p. 1033; *R. v. Turner*, 1 Moo. C. C. 239, 4 C. & P. 254. See also *R. v. Ryan*, *ante*, 758.)

The indictment should state whose house was set fire to (*Rickman's case*, 2 East, P. C. c. 21, s. 11, p. 1034), but the house may, by the present section, be in the possession "of the offender or of any other person." (See also sect. 59, *post*, 794.)

Evidence from recent possession.

Where the evidence against the prisoners was that property taken out of the house at the time of the fire was found in their possession, it was doubted whether evidence of that felony could be admitted on the charge of arson, but it was held to be a part of the one act of setting fire. (*Rickman's case*, 2 East, P. C. c. 21, s. 11, p. 1035.)

Evidence of other acts.

Evidence that on two former recent occasions attempts had been made by some one to set fire to the house of the prosecutor, though neither the prisoner nor any other person was implicated in these attempts, was admitted to show that these acts could not have had their origin in accident, and that they must have resulted from malice and design. (*Reg. v. Bailey*, 2 Cox, C. C. 311.)

So in a case tried at the Derbyshire Spring Assizes, 1865, *Willes, J.*, admitted evidence of former fires in other houses of the prisoner, and also the policies of insurance, and the demand for payment of them, and he stated the ground of his so admitting the evidence to be, that it would tend to show that the present fire was not accidental, but not to show former guilt. (*Reg. v. Gray*, *Derby Spring Assizes*, 1865, 4 F. & F. 1102.)

But evidence of the prisoner's having given notice of other fires, and claiming the reward, was held not admissible. (*Reg. v. Regan*, 4 Cox, C. C. 335.)

Evidence to rebut the intent.

On an indictment for arson with intent to defraud, it was suggested that the motive was a desire to realize the sum insured, and evidence

that the prisoner was in easy circumstances was admitted to rebut that presumption. (*Reg. v. Grant*, 4 F. & F. 322.)

By sect. 4, whosoever shall unlawfully and maliciously set fire to any station, engine house, warehouse, or other building belonging or appertaining to any railway, port, dock, or harbour, or to any canal or other navigation, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

By sect. 5, whosoever shall unlawfully and maliciously set fire to any building other than such as are in this Act before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

This section protects all buildings of a public character which may not fall under the denomination of “houses.” (See *Donnavan's case*, 1 *Leach*, 69.)

By sect. 6, whosoever shall unlawfully and maliciously set fire to any building other than such as are in this Act before mentioned shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

This section will include ornamental buildings in parks and pleasure grounds, hothouses, pineries, and all those buildings which, not being within the curtilage of a dwelling house, and not falling within any term previously mentioned were unprotected. (See *Russ. on Crimes*, vol. ii. p. 1030 (n.), 4th ed.)

By sect. 7, whosoever shall unlawfully and maliciously set fire to any matter or thing, being in, against, or under any building, under such circumstances that if the building were thereby set fire to, the offence would amount to felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

The words “under such circumstances that if the building were thereby set fire to, the offence would amount to felony,” were introduced to avoid the difficulty raised in *Reg. v. Lyons, Bell*, C. C. 38; so that if

1. *Injuries by Fire to Buildings and Goods therein.*

Setting fire to any railway station.

Setting fire to any public building.

Setting fire to other buildings.

Setting fire to goods in any building the setting fire to which is felony.

“Under such circumstances.”



1. *Injuries  
by Fire to  
Buildings  
and Goods  
therein.*

Intent.

goods in a building be now set fire to with intent to injure or defraud (sect. 3), or if there be any person in the house (sect. 2), or if there be no intent and no person in the house (sects. 4, 5, 6), the prisoner will still be liable to be convicted, having regard to some one of those sections. Where, however, it is necessary, in order to constitute a setting fire to a building, that there should be an intent; such intent must be laid and proved in an indictment under this section. (See *Russell on Crimes*, vol. ii. p. 1030, 4th ed.)

Where the prisoners were indicted for setting fire to letters in a post-office, divers persons being in the house, it was held that there was no evidence of any intent, but it was what is vulgarly called a lark, and even if the house had been burned, they would not have been guilty. (*Reg. v. Batstone*, 10 *Cox*, C. C. 20.)

Attempting to  
set fire to build-  
ings.

By sect. 8, whosoever shall unlawfully and maliciously by any overt act attempt to set fire to any building, or any matter or thing in the last preceding section mentioned, under such circumstances that if the same were thereby set fire to, the offender would be guilty of felony, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

As to the words “under such circumstances,” etc., see the preceding section.

By the 14 & 15 Vict. c. 100, s. 9, the jury may, upon an indictment for any felony or misdemeanour, find the prisoner guilty of the attempt, and he may be punished as if he had been found guilty on an indictment for the attempt; but if the prisoner should be indicted for an attempt under this section, he could not be convicted of an attempt to commit that attempt.

Attempt.

Lighting a match by the side of a stack with intent to set fire to it is an attempt to set fire to it, because it is an act immediately and directly tending to the execution of the crime. (*Reg. v. Taylor*, 1 *F. & F.* 511.)

Aiding in at-  
tempt.

On an indictment against two prisoners for attempting to set fire, one prisoner had not assisted in the attempt, but had counselled and encouraged the other; both were convicted. (*Reg. v. Clayton*, 1 *C. & K.* 128.)

Fire through  
negligence of  
servants.

By the 14 Geo. 3, c. 78, s. 84, if any menial or other servant through negligence or carelessness shall fire, or cause to be fired any dwelling-house or out-house, and be convicted thereof by oath of one witness before two justices, he shall forfeit £100 to the churchwardens to be distributed among the sufferers by such fire; and if he shall not pay the same immediately on demand of the churchwardens, he shall be committed by the justices to some workhouse, or common gaol or house of correction, for eighteen months, there to be kept to hard labour.

## II. Injuries by Explosive Substances to Buildings and Goods therein.

By sect. 9, whosoever shall unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, destroy, throw down, or damage the whole or any part of any dwelling-house, any person being therein, or of any building whereby the life of any person shall be endangered, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768.

As to the offence of making or having gunpowder, etc., with intent to commit a felony, see sect. 54, *post*, 792; and as to warrants for searching houses, etc., for such gunpowder, etc., see sect. 55, *post*, 792.

By the 24 & 25 Vict. c. 100, s. 12, whosoever by the explosion of gunpowder or other explosive substance shall destroy or damage any building with intent to commit murder shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life, or for any term not less than three [five] years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

And by sect. 30 of the same Act, the placing gunpowder near a building with intent to do any bodily injury is made a felony punishable by penal servitude for not more than fourteen years and not less than five, or by imprisonment for not more than two years. And as to other offences committed with gunpowder, see the 24 & 25 Vict. c. 100, ss. 12, 28-30, *ante*, 758.

By sect. 10, whosoever shall unlawfully and maliciously place or throw in, into, upon, under, against, or near any building any gunpowder or other explosive substance, with intent to destroy or damage any building, or any engine, machinery, working tools, fixtures, goods, or chattels, shall, whether or not any explosion take place, and whether or not any damage be caused, be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding fourteen and not less than three [five] years, or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to "unlawfully and maliciously," see sect. 1, *ante*, 768. This section is similar to sect. 30 of the 24 & 25 Vict. c. 100, but that applies to ships as well as buildings, and the intent there mentioned is an intent to do any bodily injury to any person.

As to damaging ships by gunpowder, see ss. 45, 46, *post*, 789.

3. *Injuries to Buildings by Rioters, etc.*

Destroying or damaging a house with gunpowder, any person being therein.

Destroying by gunpowder with intent to murder.

With intent to do bodily harm.

Attempting to destroy buildings with gunpowder.

## III. Injuries to Buildings by Rioters, etc.

By sect. 11, if any persons riotously and tumultuously assembled together to the disturbance of the public peace shall unlawfully and with force demolish, or pull down or destroy, or begin to demolish, pull down, or destroy, any church, chapel, meeting-house, or other place of divine worship, or any house, stable, coach-house, outhouse, warehouse, office,

Rioters demolishing church building, etc.

3. *Injuries to Buildings by Rioters, etc.*

shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, or fold, or any building or erection used in farming land, or in carrying on any trade or manufacture or any branch thereof, or any building other than such as are in this section before mentioned, belonging to the Queen, or to any county, riding, division, city, borough, poor law union, parish, or place, or belonging to any university, or college or hall of any university, or to any inn of court, or devoted or dedicated to public use or ornament, or erected or maintained by public subscription or contribution, or any machinery, whether fixed or moveable, prepared for or employed in any manufacture or in any branch thereof, or any steam engine or other engine for sinking, working, ventilating, or draining any mine, or any staith, building, or erection used in conducting the business of any mine, or any bridge, waggonway, or trunk for conveying minerals from any mine, every such offender shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years; or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement.

As to the several buildings, etc., in this and the following section mentioned, see sects. 1-6, *ante*, 768-771, and sects. 50-57 of the 24 & 25 Vict. c. 96, *ante*, 248-251.

This section relates to demolishing, etc., or beginning to demolish, etc., but the following section relates to injuring, and see the proviso to that section.

What is an intent to demolish.

Under the 7 & 8 Geo. 4, c. 30, s. 8, it was held, that if rioters leave off of their own accord before the act of demolition is completed, that is evidence to go to the jury that they did not intend to demolish, and therefore there was no "beginning to demolish" within the Act; (*R. v. Thomas*, 4 C. & P. 237; *Reg. v. Howell*, 9 C. & P. 437); but if they are interrupted, the jury may infer that they did intend to demolish. (*R. v. Batt*, 6 C. & P. 329). And whether they are interrupted or not, it is a question for the jury what was their intention. (*Reg. v. Adams*, C. & M. 299.)

The act of demolition must not be with a different intent, as with intent to get possession of a person within the house (*R. v. Price*, 5 C. & P. 510); or with intent to demolish only a part of the house, or something in the house. (*Ashton's case*, 1 Lewin, 296.)

Where there is no intent to demolish, see next section.

Demolishing by fire.

Setting fire to a house may be a "beginning to demolish." (*Reg. v. Simpson*, C. & M. 669; *Reg. v. Harris*, C. & M. 661.)

Aiding in a demolition.

If a person co-operate with a riotous assembly at any time during the act of demolition, he will be guilty as a principal, though he has not assisted with his own hands. (*Reg. v. Simpson*, C. & M. 669; *Reg. v. Harris*, C. & M. 661.)

What constitutes a demolition.

It is a sufficient demolition if the house be rendered no longer a house, though the chimney be left standing. (*Reg. v. Phillips*, 2 Moo. C. C. 252; *Reg. v. Langford*, C. & M. 602.)

What constitutes a beginning to demolish.

In order to constitute a beginning to demolish some part of the freehold must be destroyed. (*Reg. v. Howell*, 9 C. & P. 437.)

Supposed right.

Riotously demolishing a house under the belief, and in assertion of a supposed right, is not within the section, even though it constitute a riot. (*Reg. v. Langford*, C. & M. 602.)

As to seamen riotously preventing the loading of any vessels, etc., see 33 Geo. 3, c. 67.

As to riots and unlawful assemblies in general, see tit. "*Riot*," Vol. IV.

By sect. 12, if any persons riotously and tumultuously assembled together to the disturbance of the public peace, shall unlawfully and with force injure or damage any such church, chapel, meeting house, place of Divine worship, house, stable, coach-house, outhouse, warehouse, office, shop, mill, malthouse, hop-oast, barn, granary, shed, hovel, fold, building, erection, machinery, engine, staith, bridge, waggonway, or trunk, as is in the last preceding section mentioned, every such offender shall be guilty of a misdemeanour, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour: Provided that if upon the trial of any person for any felony in the last preceding section mentioned the jury shall not be satisfied that such person is guilty thereof, but shall be satisfied that he is guilty of any offence in this section mentioned, then the jury may find him guilty thereof, and he may be punished accordingly.

See the preceding section.

This section provides for those cases where the evidence fails to show an intention to demolish, but there is evidence of a riot and of injury, and the proviso enables the jury to find the prisoner guilty of this offence upon an indictment under the preceding section.

*5. Injuries to Manufactures, Machinery, etc.*

Rioters injuring building, machinery, etc.

No intention to demolish.

#### **IV. Injuries to Buildings by Tenants.**

By sect. 13, whosoever, being possessed of any dwelling-house or other building, or part of any dwelling-house or other building, held for any term of years or other less term, or at will, or held over after the termination of any tenancy, shall unlawfully and maliciously pull down or demolish, or begin to pull down or demolish, the same or any part thereof, or shall unlawfully and maliciously pull down or sever from the freehold any fixture being fixed in or to such dwelling-house or building, or part of such dwelling-house or building, shall be guilty of a misdemeanour.

Tenants of houses, etc., maliciously injuring them.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

This section only applies to any dwelling-house or building, but sect. 3, *ante*, 769, provides for cases of setting fire to any of the things there mentioned, whether in the offender's possession or not; and sect. 59, *post*, 794, extends the provisions of the Act generally to all offenders, whether in the possession of the property or not, if there be an intent to injure or defraud.

Other provisions with respect to tenants, etc.

There is no punishment awarded for offences under this section, and it will therefore be in the discretion of the Court to award fine or imprisonment or both, according to the common law. (1 *Ch. Cr. L.* 710.)

Punishment.

#### **V. Injuries to Manufactures, Machinery, etc.**

By sect. 14, whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any goods or articles of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace, being in the loom or frame, or on any machine or engine, or on the rack or tenters, or in any stage, process, or progress of manufacture, or

Destroying goods in process of manufacture, certain machinery, etc.

5. *Injuries to Manufactures, Machinery, etc.*

shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any warp or shute of silk, woollen, linen, cotton, hair, mohair, or alpaca, or of any one or more of those materials mixed with each other or mixed with any other material, or shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or render useless, any loom, frame, machine, engine, rack, tackle, tool, or implement, whether fixed or moveable, prepared for or employed in carding, spinning, throwing, weaving, fulling, shearing, or otherwise manufacturing or preparing any such goods or articles, or shall by force enter into any house, shop, building or place, with intent to commit any of the offences in this section mentioned, shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for life or for any term not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

What is a damage.

Taking away part of a frame, and thereby rendering it useless (*R. v. Tacey, R. & R.* 452), and screwing up parts of an engine, and reversing the plug of the pump, thereby rendering it useless and liable to burst (*Reg. v. Fisher, 35 L. J., M. C.* 57), are damagings within the Act, although no actual permanent injury be done.

Stage of manufacture.

Goods remain in a stage, process, or progress of manufacture though the texture be complete, and until they are fit for immediate sale. (*R. v. Woodhead, 1 M. & Rob.* 549.)

Destroying machines in other manufactures, thrashing machines, etc.

By sect. 15, whosoever shall unlawfully and maliciously cut, break, or destroy, or damage with intent to destroy or to render useless, any machine or engine, whether fixed or moveable, used or intended to be used for sowing, reaping, mowing, thrashing, ploughing, or draining, or for performing any other agricultural operation, or any machine or engine, or any tool or implement, whether fixed or moveable, prepared for or employed in any manufacture whatsoever (except the manufacture of silk, woollen, linen, cotton, hair, mohair, or alpaca goods, or goods of any one or more of those materials mixed with each other or mixed with any other material, or any framework-knitted piece, stocking, hose, or lace), shall be guilty of felony, and being convicted thereof shall be liable, at the discretion of the Court, to be kept in penal servitude for any term not exceeding seven years, and not less than three [five] years,—or to be imprisoned for any term not exceeding two years, with or without hard labour, and with or without solitary confinement, and, if a male under the age of sixteen years, with or without whipping.

As to “unlawfully and maliciously,” see sect. 1, *ante*, 768.

Machines taken to pieces.

Destroying parts of a machine taken to pieces by the owner is within the Act. (*R. v. Mackerel, 4 C. & P.* 448; *R. v. Hutchins, 2 Deac. Cr. Dig.* 1517; *R. v. Bartlett, Ib.*; *R. v. Chubb, Ib.* 1518; *R. v. Fidler, 4 C. & P.* 449; *R. v. West, 2 Deac. Cr. Dig.* 1518.)

What is a damaging.

It is not necessary that any part of the machine should be broken; a dislocation or disarrangement is sufficient. (*Reg. v. Foster, 6 Cox, C. C.* 25; and see *Reg. v. Fisher and R. v. Tacey, supra.*)

“Machine, tool, or implement.”

A table with a hole in it for water, and used in the manufacture of bricks, was held not to be a machine “prepared for or employed in any manufacture” with the 7 & 8 Geo. 4, c. 30, s. 4. (*Reg. v. Penny, Arch. Cr. Pl.* 454, 15th ed.) But it would, no doubt, now be held to be within the words “tool or implement” contained in the present section.













